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**FILED**

JUL 19 2013

BUREAU OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	DRE No. H-38526 LA
	)	
FRANK ESPINOZA,	)	OAH No. 2013010008
	)	
	)	
	)	
Respondent.	)	
_____	)	

DECISION

The Proposed Decision dated June 11, 2013, 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.

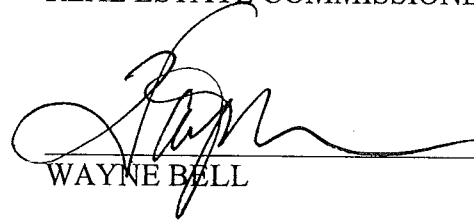
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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 August 8, 2013.

IT IS SO ORDERED 7/12/2013

REAL ESTATE COMMISSIONER

  
WAYNE BELL

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

Frank Espinoza,

Respondent.

Case No. H-38526 LA

OAH No. 2013010008

**PROPOSED DECISION**

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on May 13, 2013.

Diane Lee, Staff Counsel, represented Complainant Robin Trujillo, Deputy Real Estate Commissioner in the Department of Real Estate (Department).

Respondent Frank Espinosa represented himself.

Oral and documentary evidence was received at the hearing, and the matter was submitted May 13, 2013.

Complainant brings this Accusation to revoke Respondent's real estate broker license. For the reasons set out below, the license is revoked.

**FACTUAL FINDINGS**

*Jurisdiction and Background*

1. Complainant issued this Accusation in her official capacity.
2. The Department granted respondent a real estate salesperson license on February 25, 1997, and a real estate broker license on February 18, 2008. The broker license will expire February 18, 2016. On November 6, 2012, Complainant brought this Accusation to revoke respondent's license, and he timely requested a hearing.

*Criminal Convictions*

3. On March 11, 2010, in Los Angeles Superior Court case number 0JB02090, respondent was convicted on his no contest plea of domestic battery (Pen.Code, § 243, subd. (e)(1)), a misdemeanor. The court found that there was a factual basis for the plea. The

conviction arose out of a March 10, 2010 domestic dispute with respondent's wife about their impending divorce. Respondent was sentenced to 10 days in jail, with credit for four days served, placed on summary probation for three years, fined \$560, and ordered to complete three days of "tree farm" service. He was allowed to perform an additional six tree farm days in lieu of the jail time. He was also ordered to stay away from the victim and to complete a 52-week domestic violence treatment program.

4. On June 6, 2012, in Orange Superior Court case number 11NF2507, respondent was convicted on his guilty pleas of domestic battery causing injury (Pen. Code, § 273.5, subd. (a) with a prior domestic battery conviction (Pen. Code, § 273.5, subd. (e)(1)), a felony, and violating a protective or stay-away order issued by a court (Pen. Code, § 166, subd. (c)(1)), a misdemeanor. On August 13, 2011, respondent was arrested after he grabbed the victim (a woman with whom he had been living for about a year) by the hair and arms and dragged her on the floor, according to the "Factual Basis" statement respondent signed as part of his guilty plea. On August 19, 2011, the Orange County Superior Court issued an order that respondent not contact the victim and stay 100 yards away from her. Respondent violated that order on October 12, 2011, according to his Factual Basis statement, by contacting her knowing that his actions violated the order. He was sentenced to 180 days in jail (with credit for 24 days served and 12 days of good conduct) fined \$670 and placed on formal probation for five years, a condition of which was to complete a domestic violence program with a drug and alcohol component.

#### *Mitigation, Aggravation and Rehabilitation*

5. Respondent testified at hearing that he disagreed with the Factual Basis statement that he signed as part of his plea. He testified that contrary to his written admission that his actions included "grabbing [the victim] by the hair and arms and dragging her on the floor causing visible injuries," the victim had actually pushed respondent, fallen down, and then crawled away, giving herself rug burns in the process. He also maintained that the victim initiated the later contact for which he was convicted of violating the protective order. Respondent's testimony contradicted his written admission to the criminal court that he "willfully, knowingly and unlawfully violated a protective and stay away order." His denial of culpability and contradiction of his written statement to the court indicate an unwillingness to take responsibility for his actions.

6. Respondent completed the community service and domestic violence program required for his 2010 conviction. He was still on probation when he was convicted in June 2012.

7. Respondent completed the domestic violence class required for his 2012 convictions. He also completed a parenting class while he was in jail. He has not paid all of the fine, and remains on probation until June 2017.

8. Other than continuing education for his broker license, respondent has undertaken no education or vocational training in the last four years.

9. Respondent is unemployed. He worked full time in real estate between 1997 and 2009 or 2010. He worked as an accounts payable clerk from about 2010 to November 2011, but "did some real estate work" while working in accounts. He is now applying for property manager positions, but also wants to do real estate sales transactions.

10. Respondent has not seen his ex-girlfriend, the victim involved in the 2012 conviction, since the day he violated the protective order.

11. Respondent is 40 years old. His two children, now 16 and 14, live with their mother. He sees them Wednesday evenings and alternate weekends. He talks to his ex-wife only regarding their children. He is in arrears on child support payments. He has given notice that he is unemployed so that child support can be deducted from his unemployment checks.

12. Respondent introduced three reference letters from persons who know him professionally, praising his integrity and professionalism. None of them mentioned his convictions, though one of the writers is the executive director of the Pico Union Housing Corporation, a non-profit organization where respondent has worked, and where he also did some of his community service for one of his convictions. Respondent has done some volunteer work with Pico Union Housing Corporation other than to meet community service requirements.

## LEGAL CONCLUSIONS

1. There is cause to revoke or suspend respondent's license under Business and Professions Code sections 490 and 10177, subdivision (b),<sup>1</sup> as paragraph 5 of the Accusation alleges. Section 490, subdivision (a) allows a board to 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 the license was issued." Section 10177, subdivision (b), which applies specifically to the Department, similarly allows it to 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. Respondent's convictions for domestic violence (Factual Findings 3 and 4) are substantially related under California Code of Regulations, title 10, section 2910, subdivision (a)(8),<sup>2</sup> because they were unlawful acts involving a threat of doing substantial injury to another person. His conviction for violating the protective order (Factual Finding 4) was substantially related under CCR section 2910, subdivision (a)(9), because it was "contempt of court or willful failure to comply with a court order." The three convictions within 15 months are substantially related as conduct "which demonstrates a pattern of repeated and willful disregard of law."

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<sup>1</sup> Further references to the Business and Professions Code are cited as sections.

<sup>2</sup> "CCR" will denote further references to California Code of Regulations, title 10.

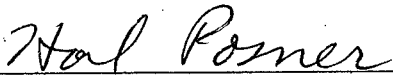
2. Respondent has the burden of showing rehabilitation. Respondent has not met that burden. He has met few of the applicable criteria of rehabilitation set out in CCR section 2912. Less than two years have passed since his last conviction. (Factual Finding 4; CCR §2912, subd. (a).) He has not paid the fine imposed for his 2012 conviction (Factual Finding 7; CCR §2912, subd. (g).) He has not completed probation for his 2012 conviction and did not complete probation for his 2010 misdemeanor conviction because he was convicted of a felony while on probation (Factual Findings 5-7; CCR §2912, subd. (e)), and his convictions have not been expunged (CCR §2912, subd. (c).) He has not shown stability of family life, having had a marriage and a domestic relationship end in violence within the last three years (Factual Findings 3 and 4; CCR §2912, subd. (j).) He has not been involved in formal education or vocational training for economic self-improvement (Factual Finding 8; CCR §2912, subd. (k).) While he has shown some involvement in community or charitable activity (Factual Finding 12), it is not clear that the involvement is "significant and conscientious." (CCR §2912, subd. (l).) His hearing testimony contradicting his admission of guilt to the court (Factual Finding 5) shows a lack of change in attitude from that which existed at the time he committed the crimes. (CCR §2912, subd. (m).)

3. Respondent is on probation for a felony and misdemeanor that he committed while on probation. His testimony contradicting his written admission of guilt makes it impossible to conclude that the public could be adequately protected if he were allowed to remain licensed.

#### ORDER

Respondent Frank Espinoza's license rights under the Real Estate Law are revoked.

DATED: June 11, 2013

  
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HOWARD POSNER  
Administrative Law Judge  
Office of Administrative Hearings