

Back glass

BEFORE THE DEPARTMENT OF REAL ESTATE

BY: Zhi-Jia

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DECISION

REAL ESTATE COMMISSIONER

By: Jeffrey Mason
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

Kambiz Boudai,

Respondent.

Case No. H-38552 LA

OAH No. 2013010890

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on May 9, 2013.

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

Respondent Kambiz Boudai represented himself.

Oral and documentary evidence was received at the hearing, and the matter was submitted May 9, 2013.

The Department of Real Estate brings this Accusation to revoke Respondent's real estate salesperson 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 December 12, 2007. It expired December 11, 2011. On November 13, 2012, the Department brought this Accusation to revoke respondent's license, and he timely requested a hearing.

Criminal Conviction

3. On July 28, 2010, in Los Angeles Superior Court, case number 0PY03276, respondent was convicted on his no contest plea of inflicting corporal injury on a cohabitant (Pen. Code § 273.5), a misdemeanor. The court found that there was a factual basis for the

plea. Respondent was sentenced to the one day in jail he had already served, fined \$560, placed on three years of summary probation, and ordered to complete 30 days of Cal Trans service and 52 weekly domestic violence classes. He stipulated to paying \$10,000 in restitution to the victim.

Mitigation, Aggravation and Rehabilitation

4. The incident leading to the conviction consisted of two altercations between respondent and his girlfriend, one in their apartment shortly after midnight on May 27, 2010, and the other about 8 p.m. that evening. In his testimony at hearing, Respondent characterized his actions mostly as attempts to break away from the victim or quiet her down. During the latter episode, respondent was walking on the sidewalk, the victim drove after him in her car and attempted to engage him, and respondent pulled her out of the car. She had multiple bruises on her hands and arms and an abrasion on her lip. Respondent characterized the relationship between him and the victim as tense because her religion and ethnicity were unacceptable to his family. He no longer sees her.

5. Respondent completed the Cal Trans service and the 52-week domestic violence program. He paid the \$10,000 in restitution on September 21, 2010. He remains on probation until July 2013.

6. Respondent testified that he learned in his domestic violence class to "handle things differently." Asked how he should have handled the May 27 incident leading to the conviction differently, his first response was that he should have broken up with the victim earlier. He added that at the time of the incident he could have left before he got to the point where he was no longer thinking clearly.

7. Respondent introduced 13 letters from friends, relatives, co-workers and acquaintances, all written after his arrest but before his conviction. They are therefore given no significant weight in assessing rehabilitation. None of them mention the arrest, although the letter from psychotherapist who had been seeing respondent for about three months indicated that he was aware of it, and respondent testified at hearing that one other writer knew of it. Respondent testified that one writer believed he was writing a reference letter to help respondent buy a condominium, and four other letters were similar to that one, indicating that the writers were under a similar misconception.

8. Respondent is 31 years old. He is unmarried and has no children. He is not in a domestic relationship now. He is not involved in community or charitable work. He has not undertaken education or vocational training since his conviction.

9. Respondent has not worked as a real estate salesperson. He did not have an employing broker in the four years his license was in effect. There was no evidence of any other license discipline. Since December 2005, he has worked as an engineer doing risk assessment for a business and commercial property insurance firm. He wants a real estate license primarily to invest in properties for his own account.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 10103, the Department retains jurisdiction to proceed in this matter even though respondent's license has expired.

2. There is cause to revoke or suspend respondent's license under Business and Professions Code sections 490 and 10177, subdivision (b),¹ as paragraph 4 of the Accusation alleges. Section 490, subdivision (a) allows a board to revoke a license if 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." 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 conviction for injuring a cohabitant (Factual Findings 3 and 4) is substantially related under California Code of Regulations title 10, section 2910, subdivision (a)(8),² because it was an unlawful act "with the intent or threat of doing substantial injury to the person or property of another."

3. Respondent has the burden of showing rehabilitation. Respondent has failed to make a strong showing of rehabilitation. He has met some of the criteria of rehabilitation set out in CCR section 2912 and not met others. More than two years have passed since his conviction (Factual Finding 3; CCR §2912, subd. (a)), and he has paid court-ordered restitution to the victim. ((Factual Finding 5; CCR §2912, subd. (b).) He has terminated the relationship with the victim (Factual Finding 4; CCR §2912, subd. (i).) He has not shown that he has paid the fine imposed for the conviction (Factual Finding 5; CCR §2912, subd. (g)), and he has not completed probation or had the conviction dismissed under Penal Code section 1203.4. (Factual Finding 5; CCR §2912, subd. (e) and (c).) He has not enrolled in formal education or vocational training courses (Factual Finding 8; CCR §2912, subd. (k)) and is not involved in programs to provide social benefits or ameliorate social problems. (Factual Finding 8; CCR §2912, subd. (l).) He has not established stability of family life. (Factual Finding 8; CCR §2912, subd. (l).)

4. Respondent has not made a convincing showing that his attitude has changed since the crime (CCR §2912, subd. (m).)

5. Respondent's four years as a licensed real estate salesperson are not a factor in mitigation, because he was not working in real estate during that time. It would not be in the public interest to allow her to remain licensed.

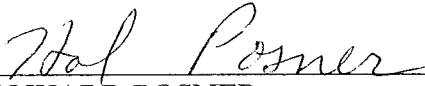
¹ Further references to the Business and Professions Code are cited as sections.

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

ORDER

Respondent Kambiz Boudai's license rights under the Real Estate Law are revoked.

DATED: June 5, 2013



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings