

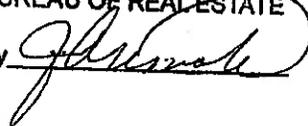
**FILED**

DEC 24 2013

BEFORE THE BUREAU OF REAL ESTATE

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

By 

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In the Matter of the Accusation of )  
MANUEL GUTIERREZ, )  
Respondent. )

CalBRE No. H-38890 LA  
OAH No. 2013070660

DECISION

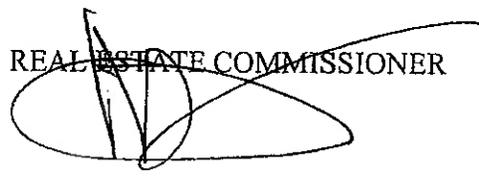
The Proposed Decision dated December 3, 2013, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses, 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 JAN 1<sup>st</sup>, 2014.

IT IS SO ORDERED DEC 23 2013

REAL ESTATE COMMISSIONER  


By: JEFFREY MASON  
Chief Deputy Commissioner

BEFORE THE  
BUREAU OF REAL ESTATE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MANUEL GUTIERREZ,

Respondent.

Case No. H-38890 LA

OAH No. 2013070660

**PROPOSED DECISION**

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on October 18, 2013.

Diane Lee, Staff Counsel, represented Complainant Veronica Kilpatrick, Deputy Real Estate Commissioner in the Bureau of Real Estate (Bureau).

Respondent Manuel Gutierrez represented himself.

Oral and documentary evidence was received at the hearing. The record was left open until November 6, 2013, to allow Respondent to submit additional evidence and to allow Complainant to respond or object. Letters from Marjorie Hodges and Maggie Gutierrez were submitted and admitted without objection as Respondent's exhibits G and H, respectively, and the record was closed, and the matter submitted, on November 6, 2013.

Complainant brings this Accusation to revoke Respondent's real estate broker license. For the reasons set out below, the license is revoked, but Respondent may apply for a restricted salesperson license.

**FACTUAL FINDINGS**

*Jurisdiction and Background*

1. Complainant issued this Accusation in her official capacity.
2. Respondent became a licensed real estate salesperson on May 31, 2002, and a licensed real estate broker on August 14, 2007. His broker license expires August 14, 2017. On May 31, 2013, Complainant brought this Accusation to revoke his license, and Respondent timely requested a hearing.

### *Criminal Conviction*

3. On March 29, 2012, in Riverside Superior Court case number SWM1100772, Respondent was convicted on his guilty plea of vandalism causing damage of \$400 or more (Pen. Code, § 594, subd. (b)(1)), a misdemeanor. On the same day, in case number SWM1100985 in the same court, he was also convicted of violating a protective order (Pen. Code, § 273.6, subd. (a)), a misdemeanor. On the vandalism conviction, he was sentenced to seven days in jail with credit for seven days served, fined \$1,034.45, ordered to complete 20 days of community service and a 52-week anger management course, and placed on three years of summary probation, terms of which included an order that he not harass, threaten or annoy his wife and two children. The court minutes indicate that there was no separate sentence for the protective order conviction.<sup>1</sup>

### *Mitigation, Aggravation and Rehabilitation*

4. The vandalism conviction stemmed from an incident in which respondent was drunk and became destructive during an argument with his wife at her parents' house, where she had taken their two children the Sunday night after Thanksgiving in 2010. Respondent turned over a sofa, and struck his wife's car with his car as he drove away.<sup>2</sup>

5. The conviction for violating a protective order occurred because the vandalism incident resulted in a temporary restraining order that Respondent stay away from his wife and children, and remain at least 100 yards from his children's elementary school. The school nonetheless called Respondent's cell phone and asked him to come to the school when his ten-year-old son had a tantrum in class. Respondent's son suffers from Prader-Willi syndrome, a genetic disorder that causes, among other things, mental retardation and chronic overeating. Respondent went to the school, in violation of the restraining order.

6. Respondent estimates that he was involved in 200 real estate transactions as a salesperson or broker. In 2009, after the real estate market crashed, he found a niche working in "cash for keys" real estate repossessions, but declining prices made it hard to earn a living in that field, and his last real estate transaction of any sort was in March 2011. He has been a licensed automobile salesperson, working at a Nissan dealership in Hemet, since December 2011, but wants to work again in real estate. He submitted a from letter Marjorie Hodges, a licensed real estate broker, saying Respondent was a hard worker and dedicated to his family, and she was "not averse to sponsoring Manuel should the need arise."

7. 

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<sup>1</sup> The minutes for the sentence in the protective order case say only, "No time no fine."

<sup>2</sup> This information came solely from Respondent's testimony at hearing. No conviction detail report was introduced, and the police report did not mention vandalism or violence, saying only that there was a domestic dispute and that Respondent was intoxicated.

Before the PTSD diagnosis, he believed he was "just crazy." Understanding what happened to him as a child (he testified specifically about seeing a police report that had been discovered by a lawyer who was "suing the diocese") has helped him regain control of his life. But in late 2010 and early 2011, when the crimes were committed, Respondent was on medication that amplified his depression and made him manic when it wore off. His doctor told him the problems with the medication were "just a phase," but Respondent felt the medication was worse than no medication at all. In August or September 2011, after the convictions, he was put on different medications that have worked better. He sees a psychiatrist every three months. He has refrained from alcohol since February 2011, because alcohol aggravated his mood disorder. In 2011 he completed two courses (one of them meeting twice weekly for six months) for persons with co-occurring disorders (in his case, alcohol abuse and bipolar disorder). Neither course was required by his probation.

8. In August 2012, after not living with his family since shortly after the November 2010 vandalism incident, Respondent moved back in with his wife and family. His wife had filed for marital dissolution, but has ceased pursuing the dissolution action. Respondent and his wife are still together. They see a marriage counselor monthly.

9. Respondent completed the anger management course and community service required by his sentence. The only evidence about his payment of the fine is contained in the court minutes, which show that Respondent was paying the fine in monthly \$80 increments, and had paid \$420 as of October 12, 2011, the date the minutes were printed out. At that rate, the fine would have been paid in July 2012. He has met the other conditions of probation. He remains on probation until March 2014. His convictions have not been expunged.

10. Respondent has no other history of license discipline in his 11 years as a licensee. He has not shown significant involvement in programs designed to provide social benefits or to ameliorate social problems, and has not undertaken education or vocational training for economic self-improvement.

11. There was no evidence of Complainant's costs of investigation and enforcement.

## 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>3</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, 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 Bureau, similarly allows it to revoke a

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<sup>3</sup> Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to the title 10 of the California Code of Regulations.

license if the licensee has been convicted of "a crime substantially related to the qualifications, functions, or duties" of a real estate licensee. Vandalism (Factual Finding 3) is a substantially related crime under CCR section 2910, subdivision (a)(8), because it is an unlawful act "with the intent or threat of doing substantial injury to the person or property of another." Violating a court order (Factual Finding 3) is a substantially related crime under CCR section 2910, subdivision (a)(9).

2. Respondent has the burden of showing rehabilitation. He meets some of the applicable criteria of rehabilitation set out in CCR section 2912, and fails to meet others:

a. More than two years have passed since his convictions (CCR §2912, subd. (a); Factual Finding 3.)

b. He has paid all or a substantial portion of the fine. (CCR §2912, subd. (g); Factual finding 9.)

c. He has not completed probation, and his convictions have not been expunged. (CCR §2912, subd. (e) and (c); Factual Finding 9.)

d. He has established new business relationships (CCR §2912, subd. (h); Factual Finding 6.)

e. Respondent has re-established a stable family life. (CCR §2912, subd. (j); Factual Finding 8.)

f. He has not shown significant involvement in programs designed to provide social benefits or to ameliorate social problems, or education or vocational training for economic self-improvement. (CCR §2912, subs. (l) and (k); Factual Finding 10.)

g. Respondent has shown a change in attitude from that which existed when he committed the crimes. (CCR §2912, subd. (m.) He has worked to come to terms with his past and his mental condition, and shown determination to pursue mental health and sobriety. (Factual Finding 7.)

3. Respondent has made laudable progress in rehabilitation. But he is still on probation and has only recently reached a point of mental and familial stability. The public will be better protected if he is subject to supervision with a restricted salesperson license.

#### ORDER

All of Respondent Manuel Gutierrez's licenses and licensing rights under the Real Estate Law are revoked, but a restricted real estate salesperson license shall be issued to Respondent under Section 10156.5 of the Business and Professions Code if Respondent applies for, and pays to the Bureau of Real Estate the appropriate fee for, the restricted license within 90 days from the effective date of this Decision. The restricted license shall be subject to all 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 before 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.

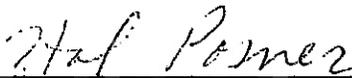
2. The restricted license issued to Respondent may be suspended before hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license, or for the removal of any of the conditions, limitations or restrictions of a restricted license, until two 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 the 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. Complainant's prayer for cost recovery is denied.

DATED: December 3, 2013

  
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HOWARD POSNER  
Administrative Law Judge  
Office of Administrative Hearings