

filed

FILED

APR 08 2014

BUREAU OF REAL ESTATE

By *J. Garroh*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
EDWIN ACEVEDO,)
Respondent.)

NO. H-38986 LA

ORDER VACATING DECISION AND SETTING ASIDE DEFAULT

On February 6, 2014, a Default Order was filed. Thereafter, on February 12, 2014, a Decision was rendered revoking the real estate license of Respondent EDWIN ACEVEDO, effective March 28, 2014. Thereafter, an Order Staying Effective Date of the Decision was granted, which stayed the effective date of the Decision to April 7, 2014.

On March 21, 2014, good cause was presented to set aside the Default Order of February 6, 2014, and to vacate the Decision of February 12, 2014, and to have the matter remanded to the Office of Administrative Hearings as a contested matter.

1 NOW, THEREFORE, IT IS ORDERED that the Default Order of February 6,
2 2014, is set aside and the Decision of February 12, 2014, is vacated and that the Matter of the
3 Accusation filed on August 6, 2013, be remanded to the Office of Administrative Hearings.

4 This Order shall be effective immediately.

5 DATED: 4/7/2014.

6
7 Real Estate Commissioner

8
9 
10 _____
11 Wayne S. Bell

FILED

MAR 25 2014

BUREAU OF REAL ESTATE

By *Stephanus*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
EDWIN ACEVEDO,) No. H-38986 LA
Respondent.)

ORDER STAYING EFFECTIVE DATE

On February 12, 2014, a Decision was rendered in the above-titled matter, to become effective March 28, 2014.

IT IS HEREBY ORDERED that the effective date of the Decision of February 12, 2014 is stayed for a period of 10 days to consider Respondent's Petition to Vacate Decision and Set Aside Default.

The Decision of February 12, 2014 shall become effective at 12 o'clock noon on April 7, 2014.

IT IS SO ORDERED this 25th day of March, 2014.

Real Estate Commissioner

By: *Phillip Ihde*
Phillip Ihde

FILED

MAR 07 2014

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of))	NO. H-38986 LA
EDWIN ACEVEDO,)	
)	
Respondent.)	
_____))	

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on February 6, 2014 and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

This Decision revokes a real estate license 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.

FINDINGS OF FACT

1.

On August 1, 2013, Robin Trujillo made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

Respondent EDWIN ACEVEDO ("Respondent") filed a Notice of Defense. Respondent was duly notified of the hearing, which was scheduled for February 4, 2014.

Respondent failed to appear at the February 4, 2014 hearing. On February 6, 2014, Respondent's default was entered herein.

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code as a real estate broker.

3.

On April 17, 2012, Respondent was convicted of violating California Penal Code Section 243(e)(1)(battery against spouse/parent of child), a misdemeanor.

4.

The evidence established that the crime for which Respondent was convicted is substantially related to the qualifications, functions and duties of a real estate licensee.

DETERMINATION OF ISSUES

1.

Cause for disciplinary action against Respondent exists pursuant to Business and Professions Code Sections 490 and 10177(b).

2.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

///

///

///

ORDER

The license and license rights of Respondent
EDWIN ACEVEDO under the provisions of Part I of Division 4 of
the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock
noon on MAR 28 2014.

DATED: FEB 12 2014.

~~Real Estate Commissioner~~

By: JEFFREY MASON
Chief Deputy Commissioner

FILED

FEB - 6 2014

BUREAU OF REAL ESTATE

By *[Signature]*

1 Bureau of Real Estate
2 320 West Fourth Street, Suite 350
3 Los Angeles, CA 90013
4
5
6
7
8
9 (213) 576-6982

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

9	In the Matter of the Accusation of)	NO. H-38986 LA
10	EDWIN ACEVEDO,) <u>DEFAULT ORDER</u>
11))
12))
13	Respondent.)

14 Respondent EDWIN ACEVEDO, filed a Notice of
15 Defense within the time required by Section 11506 of the
16 Government Code. A hearing was set for February 4, 2014.
17 Respondent was duly notified of the hearing but failed to
18 appear. Respondent is now in default. It is therefore,
19 ordered that a default be entered on the record in this
20 matter.

21 IT IS SO ORDERED FEBRUARY 4, 2014.

22 Real Estate Commissioner
23 Wayne S. Bell

24
25 BY: *[Signature]*
26 PHILLIP IHDE
27 Regional Manager

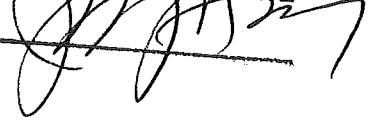
FL 10/13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

NOV 13 2014

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

EDWIN ACEVEDO,

Respondent.

No. H-38986 LA
OAH No. 2013090333

NOTICE

TO: EDWIN ACEVEDO, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated October 3, 2014, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated October 3, 2014, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on August 27, 2014, any written argument hereafter submitted on behalf of Respondent and Complainant.

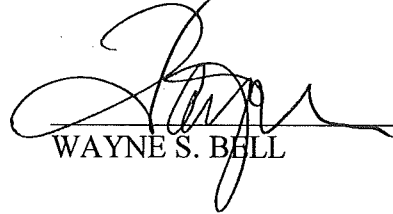
Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of August 27, 2014, at the

1 Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for
2 good cause shown.

3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Los Angeles office of the
5 Bureau of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 11/7/2014

7 REAL ESTATE COMMISSIONER

8 
9
10 WAYNE S. BELL

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

In the Matter of the Accusation Against:

EDWIN ACEVEDO,

Respondent.

BRE No. H-38986 LA

OAH No. 2013090333

PROPOSED DECISION

Administrative Law Judge Gloria A. Barrios heard this matter on August 27, 2014, in Los Angeles, California.

James A. Demus, Staff Counsel for the Bureau of Real Estate (Bureau) represented Robin Trujillo (Complainant), Deputy Real Estate Commissioner.

Edwin Acevedo (Respondent) was present and represented himself.

On Complainant's unopposed motion at hearing, the Accusation was amended to conform to proof as follows: the language at page 1, lines 25-27, page 2, lines 1-3, paragraph 2, "On December 17, 2012, Respondent's license expired. Pursuant to Business and Professions Code Section 10201, Respondent retains renewal rights for two years. The Bureau of Real Estate holds jurisdiction over the lapsed license, pursuant to Business and Professions Code Section 10103" was removed.

Oral and documentary evidence was received, and the matter was submitted for decision on August 27, 2014.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent has been licensed as a real estate broker since December 18, 2008. The license has been renewed through June 6, 2017. There was no evidence of any prior discipline imposed against the license.

///

3. On April 17, 2012, Respondent was convicted, after his plea of nolo contendere, of violating Penal Code section 243, subdivision (e)(1), battery against a spouse or parent of a child, a misdemeanor (*People v. Edwin Acevedo*, Superior Court of the State of California, County of Los Angeles, case number 2CP02153.) Imposition of sentence suspended, and Respondent was sentenced to summary probation for 36 months. Respondent was also ordered to pay restitution, fines and fees totaling \$590 and sentenced to five days in jail less credit for five days served. The court ordered Respondent to enroll in and complete a 52-week domestic violence program. The court also ordered Respondent to have no contact with the victim.¹ At the time of the hearing, Respondent was on probation and continues to pay the court ordered restitution, fines and fees.

4. The facts and circumstances underlying Respondent's criminal conviction are that on April 15, 2012, Respondent and his then girlfriend, Nataly Maldonado, got into a physical altercation at his home. They were not living together, but had a three-year old daughter in common. Both had been drinking alcohol. Respondent struck Maldonado in the face in the presence of their daughter.

5. According to Respondent, the altercation occurred when Maldonado attempted to take the child in her car. He did not want her to drive with their daughter while intoxicated. He admitted that he struck Maldonado in struggling to take the child from her arms. Respondent admitted he was wrong to hit her. Maldonado drove to the police station with the child and reported the domestic incident. The police arrested Respondent and reported Maldonado and Respondent to the Los Angeles County Department of Children and Family Services (DCFS.) The police reported Maldonado to DCFS because she was driving while intoxicated with the child in her vehicle. DCFS required Respondent and Maldonado to take domestic violence/parenting classes.

6. Respondent and Maldonado stayed involved for a time following the domestic incident. Respondent is currently engaged to another woman. They are living together. He is on good terms with Maldonado. They are co-parenting their daughter. Respondent has joint custody of his daughter and provides child support. Respondent is very active in his daughter's life. Maldonado wrote a letter in support of Respondent. She wrote, "I, Nataly Maldonado, am writing this letter for the purpose of showing the court that Edwin Acevedo has been educated on the dangers and consequences of Domestic violence. Even though we're now separated we still were in a relationship for one more year after the incident and during that time he never showed any type of aggression towards me, I truly believe it was an isolated incident and it was something that we deeply regretted. I also know how passionate he is about his Real Estate career and have seen how he helps families acquire their first home from time to time. I also hear[d] he completed his 52 weeks of domestic

¹ On October 3, 2012, the court revoked Respondent's probation because he missed a court date. However, it appears his probation was reinstated without consequence. (Complainant's Exhibit 3.)

violence which speaks volumes for his rehabilitation. We now have a cordial co-parenting relationship and our goal is to raise our daughter in a positive and safe environment. I also wish him the best in his new relationship.” (Respondent’s Exhibit A.)

7. Claudia Velasquez, Respondent’s fiancé, also wrote a letter on his behalf. She wrote, “I, Claudia Velasquez, ha[ve] been in a relationship with Edwin Acevedo for a year and 6 months and we recently became engaged. We have been living together for about a year and through that time Edwin Acevedo has not demonstrated any kind of violent behavior. I would like to express to the California Bureau of Real Estate the passion that Edwin Acevedo has in his real estate career. I myself have been impressed in the impact he has in the community that I have made a career move into the real estate industry. I urge the California Bureau of Real Estate to see that the incident in question was isolated.” (Respondent’s Exhibit B.)

8. Respondent completed the 52-week domestic violence program. (Respondent’s Exhibit D.) As a result of the DCFS’ investigation, children’s court required Respondent to enroll in and complete 36 individual counseling sessions in domestic violence and parenting. At the time of the hearing, Respondent was undergoing counseling. Gloria Nunez, marriage and family therapist and Mario M. Ugarte, Ph.D., marriage and family therapist and Attorney at Law, of West Advisory Christian Counseling Center, wrote a letter to children’s court after conducting an assessment of Respondent. They wrote, “Mr. Acevedo during the intake process appeared sincere and willing to comply with the court order and DCFS[’] directives.” (Respondent’s Exhibit C.) Respondent completed his parenting classes.

9. Respondent is currently a broker at El Dorado Realty located in Huntington Park. He has been at El Dorado since 2011. Respondent supervises two agents. Respondent was a real estate salesperson at Century 21 from 2009 through 2011. As a real estate agent, he focused on REO’s (bank owned properties), short sales, first-time buyers and trustee sales. Before entering the real estate field, Respondent was a software engineer at Boeing from 1998 through 2007.

10. Respondent enjoys being a broker. He likes helping people, especially first time buyers. Respondent entered the real estate field when the housing market was at its lowest. Yet, Respondent has been successful. He is proud of his achievements. Respondent does not want to lose all he has achieved due to his one mistake. He testified candidly and credibly.

11. Respondent received his Bachelor of Arts in Computer Science from the University of Southern California in 2001. He received his Master’s degree in Business Administration from the University of Southern California, Marshall School of Business in 2008.

12. Respondent donates to the homeless. Respondent gives gifts to the poor on Christmas each year. He is involved in fund raising for his daughter's day care center. Respondent purchased the Christmas tree for the day care center.

13. Respondent is engaged to be married. Respondent's employment as a broker is his primary source of income and he uses that income to support himself and his daughter.

18. Complainant introduced evidence as to its cost of its investigation and enforcement pursuant to Business and Professions Code section 10106. The requested total amount is \$1,168.10, which is reasonable under the facts of this case. (Complainant's Exhibit 5.)

LEGAL CONCLUSIONS AND DISCUSSION

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Under Business and Professions Code section 10177, subdivision (b), a real estate licensee may have his license disciplined for conviction of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee.

3. Under Business and Professions Code section 490, the Bureau may "suspend or revoke a license on the ground that 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."

4. California Code of Regulations (CCR), title 10, section 2910, subdivision, (a) (8) provides that, "doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another," bears a substantial relationship to the functions, duties and qualifications of a Bureau licensee.

5. The act for which Respondent was convicted (battery against a spouse or parent of a child) is a crime that falls under CCR, title 10, section 2910, subdivision (a)(8).

///

///

6. Cause exists to impose discipline on Respondent's real estate broker's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), because Respondent has been convicted of a crime which is substantially related to the qualifications, functions, or duties of a real estate broker, as set forth in Factual Findings 3 through 5 and Legal Conclusions 2 through 5.

7. Although cause for discipline exists, it is necessary to determine whether Respondent has been sufficiently rehabilitated to warrant his continued licensure. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

8. The Bureau has established criteria for determining rehabilitation from a conviction of a crime sufficient to warrant continued licensure. The criteria, found at CCR, title 10, section 2912, are summarized as follows:

- Subdivision (a), passage of at least 2 years since the conviction or the underlying acts;
- Subdivision (b), restitution;
- Subdivision (c), expungement of the conviction;
- Subdivision (d), expungement of the requirement to register as a sex offender;
- Subdivision (e), completion of, or early discharge from, the criminal probation;
- Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
- Subdivision (g), payment of any criminal fines or penalties;
- Subdivision (h), correction of business practices causing injury;
- Subdivision (i), new and different social and business relationships;
- Subdivision (j), stability of family life;
- Subdivision (k), enrollment in or completion of educational or training courses;
- Subdivision (l), significant involvement in community, church or private programs for social betterment; and
- Subdivision (m), change in attitude from the time of conviction to the present, evidenced by: testimony of the licensee and others, including family members, friends or others familiar with her previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

9. Respondent provided evidence of rehabilitation. Two years have passed since he was convicted. Respondent has completed the court ordered 52-week domestic violence program. He has made amends with the victim and they are co-parenting their child. Respondent has a new and stable relationship. He is currently undergoing counseling for domestic violence and parenting. He has some community involvement raising money for those in need. Although Respondent established mitigation, he is still on probation. Respondent was genuine in his remorse. He acknowledged the wrongfulness of his actions, which is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners*

(1989) 49 Cal.3d 933.) The domestic violence incident appears to be isolated. On balance, the public will be sufficiently protected if Respondent is not allowed to retain his real estate broker's license, but instead be issued a restricted real estate salesperson's license.

10. Business and Professions Code section 10106, subdivision (d), provides that the administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case. Under *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal. App 4th 32, 45, the agency must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the statute does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The agency in imposing costs in such situations must consider the licensee's subjective good faith in the merits of his position and the Bureau must consider whether or not the licensee has raised a colorable claim. The Bureau should also base its cost recovery order on equitable consideration including Respondent's ability to pay.

11. In this matter the Bureau has requested its reasonably incurred costs of investigation and prosecution totaling \$1,168.10. Complainant requested that Respondent's real estate broker's license be revoked. Respondent used the instant hearing process to obtain a reduction in the severity of the measure of discipline that Complainant requested, taking the opportunity afforded him by the hearing process to establish his rehabilitation. Under these circumstances, it would be inequitable to require Respondent to pay the entirety of the Board's costs. Rather, it would be reasonable to require Respondent to pay one half of the costs, which is \$584.05.

ORDER

All licenses and licensing rights of Respondent Edwin Acevedo under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Business and Professions Code section 10156.5, if Respondent makes application therefore and pays to the Bureau 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 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 license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

Not Adopted

(a) The conviction of Respondent (including a plea of nolo contendere) of 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 the 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 two years have elapsed from the date of issuance of the restricted license to Respondent.

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 a 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 which is the basis for the issuance of the restricted license; and

(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 license is required.

4. 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, CA 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 the suspension or revocation of that license.

///

///

RECEIVED BY THE DEPARTMENT OF REAL ESTATE, SACRAMENTO, CALIFORNIA

///


///

///

Not Adopted

5. Respondent shall pay the Bureau costs of investigation and prosecution of this action in the amount of \$584.05. Repayment of the costs shall be on such terms and conditions as Respondent and the Bureau or the Bureau's designee shall arrange, but 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 all such costs have been paid.

DATED: October 3, 2014



GLORIA A. BARRIOS
Administrative Law Judge
Office of Administrative Hearings