

FILED

APR - 5 2017

BUREAU OF REAL ESTATE

By CR Slow

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

DONALD DWIGHT DOWE,

Respondent.

) CalBRE No. H-40322 LA

) OAH No. 2017010054

NOTICE

TO: DONALD DWIGHT DOWE, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 8, 2017, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 8, 2017, is attached hereto 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 Thursday, February 16, 2017, and any written argument hereafter submitted on behalf of respondent and complainant.

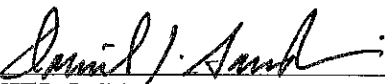
Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Thursday, February 16, 2017, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good

1 cause shown.

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

5 DATED: 3/30/17.

6 WAYNE S. BELL
7 REAL ESTATE COMMISSIONER

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9 By: 
10 DANIEL J. SANDRI
11 Chief Deputy Commissioner
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BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DONALD DWIGHT DOWE,
License Number B/01297802

Respondent.

Case No. H-40322 LA

OAH No. 2017010054

PROPOSED DECISION

This matter came before Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings, in Los Angeles, California on February 16, 2017.

Veronica Kilpatrick (complainant), Supervising Special Investigator, was represented by Steve Chu, Counsel for the Bureau of Real Estate (Bureau). Donald Dwight Dowe (respondent) was present and represented himself.

Oral and documentary evidence was presented. The record was closed and the matter was submitted for decision on February 16, 2017.

After the hearing, it was discovered that respondent's exhibits G and H contained confidential and personal information which had not been redacted. These references were redacted from the Office of Administrative Hearings' file by the ALJ on her own motion.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Bureau issued real estate broker license number B/01297802 to Respondent on September 11, 2012.
2. Complainant filed the Accusation in her official capacity as a Supervising Special Investigator for the Bureau. Respondent filed a timely Notice of Defense and this hearing ensued.

Respondent's Conviction

3. On December 5, 2014, in the Superior Court of California, County of Riverside, case number SWM1409492, respondent pled guilty to violating Penal Code section 273.5, subdivision (a), (infliction of corporal injury on a spouse), a misdemeanor. Respondent was placed on summary probation for 36 months, with certain conditions, including the payment of fines, fees and restitution, enrollment in a 52-week Domestic Violence Program, 20 hours of community service through the Alternative Sentencing Program and 15 days in the custody of Riverside County Sheriff, with credit for two days served, and the remaining 13 days of commitment to be served under the supervision of a work release program

4. The facts underlying the conviction relate to the events of October 12, 2014. That day, as respondent and his wife were preparing dinner, they began arguing about the expense of their daughter's participation in a travel volleyball team. The matter escalated so that, at one point, respondent's wife pinched his arm. In response, respondent grabbed his wife's face and pushed her backwards, causing her head to hit the kitchen cabinet. Respondent's wife suffered a one-inch cut on her left cheek with red marks along the bottom of her left jaw bone.

Mitigation/Aggravation/Rehabilitation

5a. At the time of the incident, respondent was under severe emotional and financial pressure.

5b. Earlier that year, his wife had had him served with divorce papers. Though respondent and his wife had experienced difficulties throughout their 16-year marriage for which they had sought counseling, they had been getting along well at the time his wife had him served with divorce papers. Her request had taken respondent by surprise. Respondent eventually secured a one bedroom apartment and moved out of the house, but continued to visit fairly frequently.

5c. When the discussion regarding their daughter's participation in the travel volleyball team arose, respondent had been under extreme financial stress. Respondent's wife had taken \$10,000 from their joint checking account when she had him served with divorce papers, their taxes were coming due, and he was still providing for his wife and daughter while having to pay for his own apartment.

6. Respondent accepted responsibility for his crime and expressed remorse for his actions. While he maintained that his actions were an almost automatic reaction to having been pinched by his wife during their argument, respondent also admitted that his actions were an inappropriate response for which he is deeply ashamed.

7. Respondent testified that this incidence of violence was an aberration. This assertion was corroborated by a written assessment from Jill Hoffman, Marriage and Family Therapist (MFT), the facilitator for Psychological Health Services which administered the court-ordered Domestic Violence Program respondent attended. In the completion report, the facilitator noted that respondent takes responsibility for his own behavior rather than denying, minimizing, or blaming others, and that she believes respondent's risk of recidivism is low. (Exhibit C.)

8. Respondent has completed the court-ordered Domestic Violence Program and community service, and has paid all fines. He remains on probation for his conviction until December 2017.

9. Respondent's divorce was finalized in June of 2015. He has a good relationship with his ex-wife and is active in co-parenting their daughter with her.

Professional History

10. Respondent has been a long time licensee of the Department. Prior to becoming licensed as a real estate broker in 2012, respondent was licensed as a real estate salesperson in October 14, 2000. There is no record of discipline against his salesperson or broker's licenses, or of any consumer complaints.

11. Respondent maintains good relationships with his clients. Many of them have had him handle multiple transactions for them and have recommended his services to others. Respondent submitted a number of letters from former clients, each commending him for his professionalism, hard work and the ethical manner in which he transacts business.

Charitable Activities

12. Respondent is actively involved with Animal Friends of the Valley. He actively solicits donations for the charity by sending out flyers and setting up collection boxes for donations.

Cost Recovery

13. Complainant requested recovery of the costs of investigation and enforcement totaling \$1,059.40. In support of the request for costs, complainant submitted a certified statement of investigation costs showing investigative costs of \$525.40 and a declaration regarding enforcement costs in the amount of \$534. These costs are reasonable in light of the allegations and evidence in this case.

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LEGAL CONCLUSIONS

Standard of Proof

1. The standard of proof in an administrative hearing to revoke a professional license is "clear and convincing proof to a reasonable certainty." (*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." (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487; citations omitted.)

Statutory Authority

2. Business and Professions Code¹ section 10177, subdivision (b), in conjunction with section 490, provides the Real Estate Commissioner with authority to suspend or revoke a real estate license when the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

3. "A crime is substantially related to the qualifications, functions, or duties of a real estate salesperson's license if it involves "[d]oing of any unlawful act ... with the intent or threat of doing substantial injury to the person or property of another. (California Code of Regulations, title 10², section 2910, subdivision (a)(8).)

4. A crime of corporal injury to a spouse is an unlawful act performed with the intent to do substantial injury to another, and consequently, the crime is substantially related to a real estate broker's qualifications, functions, and duties.

5. By reason of Factual Findings 3 and 4 and Legal Conclusions 2 through 4, cause exists to revoke or discipline respondent's license.

Mitigation/Rehabilitation

6. As it was established that respondent has been convicted of a substantially related crime, the onus is on respondent to show that he is sufficiently

¹ All further statutory references are to the Business and Professions Code unless otherwise indicated.

² All references to a regulation are to California Code of Regulations, title 10, unless otherwise noted.

rehabilitated from the wrongful act such that he is fit to hold the license. (Evid. Code, §§ 115 and 500.)

7. In issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d, 1016, 1030-1031.) The purpose of proceedings of this type is not to punish respondent. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.)

8. Regulation section 2912 sets forth the Department's criteria for evaluating a licensee's rehabilitation from a substantially-related crime. Respondent has met many of the rehabilitation criteria that apply in this case. Respondent was convicted on December 5, 2014, two years and three months prior to his hearing. (§ 2912, subd. (a).) Although the conviction has not been expunged or the probation terminated, he is in full compliance with the terms and conditions of his criminal probation. (§ 2912, subd. (g).) Respondent and his ex-wife maintain a good relationship and are cooperative in co-parenting their daughter. (§ 2912, subd. (j).) Finally, respondent is active in the community through his charitable efforts with Animal Friends of the Valley. (§ 2912, subd. (l).)

9. At the hearing, respondent submitted significant evidence establishing that the October 2014 incident constituted aberrant behavior in an otherwise law-abiding life. At that time, respondent was experiencing severe emotional and financial distress caused by the break-down of his 16 year marriage. When his wife requested that respondent agree to take on the additional financial obligations associated with his daughter's participation in volleyball, he reacted badly and in an uncharacteristic manner, which he deeply regrets. Based on the foregoing, the public will be adequately protected by imposing an order of revocation stayed and issuance of a restricted license, as set forth below.

10. Section 10106, subdivision (a), provides that in any order issued in resolution of a disciplinary proceeding, "the commissioner may request the ALJ to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." Pursuant to section 10106, Complainant is entitled to recover reasonable costs of prosecution of this matter, as set forth in Factual Finding 13.

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ORDER

All licenses and licensing rights of respondent Donald Dwight Dowe under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor 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 Business and Professions Code section 10156.7 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 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.

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5. Respondent shall pay costs of the investigation and prosecution of this matter in the amount of \$1,059.40 to the Bureau of Real Estate, in accordance with a payment plan acceptable to the Bureau.

DATED: March 8, 2017

DocuSigned by:

Nana Chin

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NANA CHIN

Administrative Law Judge

Office of Administrative Hearings