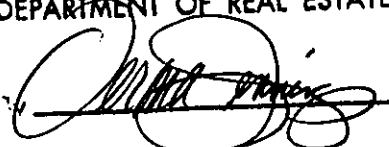


FILED
AUG 20 2008
DEPARTMENT OF REAL ESTATE


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 DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-30750 LA
RUDY TIM LOZANO,)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 6, 2004, a Decision was rendered herein
revoking Respondent's real estate salesperson license.

On or about March 26, 2007, Respondent petitioned for
reinstatement of said license and the Attorney General of the
State of California has been given notice of the filing of said
petition.

I have considered the petition of Respondent and
the evidence and arguments in support thereof. Respondent
has demonstrated to my satisfaction that Respondent meets
the requirements of law for the issuance to Respondent of
an unrestricted real estate salesperson license and that
it would not be against the public interest to issue said
license to Respondent.

1 NOW, THEREFORE, IT IS ORDERED that Respondent's
2 petition for reinstatement is granted and that a real estate
3 salesperson license be issued to Respondent, if Respondent
4 satisfies the following conditions within nine (9) months
5 from the date of this Order:

6 1. Submittal of a completed application and payment
7 of the fee for a real estate salesperson license.

8 2. Submittal of evidence of having, since
9 Respondent's license was revoked, taken and successfully
10 completed the continuing education requirements of Article 2.5
11 of Chapter 3 of the Real Estate Law for renewal of a real estate
12 license.

13 This Order shall be effective immediately.

14 Dated: 8/12/08

15 JEFF DAVI
16 Real Estate Commissioner

17
18 
19

20 BY: Barbara J. Bigby
21 Chief Deputy Commissioner

facto

FILED
OCT 14 2004
DEPARTMENT OF REAL ESTATE

By *Jana B. Stone*

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 DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE No. H-30750 LA
)	
RUDY TIM LOZANO,)	OAH No. L-2004030792
)	
Respondent.)	
)	

DECISION AFTER REJECTION

This matter was heard on April 22, 2004, by Administrative Law Judge ("ALJ") Milford A. Maron at the Office of Administrative Hearings ("OAH) in Los Angeles, California.

Respondent RUDY TIM LOZANO ("Respondent") appeared personally and represented himself.

Elliott Mac Lennan, Counsel, represented the Complainant.

Evidence was received, the hearing was closed.

On May 4, 2004, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my Decision herein.

Writ
filed -
Stay
granted

1 Pursuant to Section 11517(c) of the Government Code of
2 the State of California, Respondent was served with notice of my
3 determination not to adopt the Proposed Decision of the
4 Administrative Law Judge along with a copy of said Proposed
5 Decision. On June 1, 2004, Respondent was notified that the
6 case would be decided by me upon the record, the transcript of
7 proceedings held on April 22, 2004, and upon written argument
8 offered by Respondent and Complainant.

9 On July 23, 2004, argument was received from
10 Respondent. On August 18, 2004, Complainant submitted argument.

11 I have given careful consideration to the record in
12 this case including the transcript of proceedings of April 22,
13 2004. I have also considered the argument submitted by
14 Respondent and the argument submitted on behalf of Complainant.

15 The following shall constitute the Decision of the Real
16 Estate Commissioner in this proceeding:

17 FACTUAL FINDINGS

18 1. The Complainant, Maria Suarez, Deputy Real Estate
19 Commissioner of the Department of Real Estate of the
20 State of California (hereafter, "Department") filed Accusation
21 No. H-30750 LA in her official capacity on March 8, 2004.
22 Thereafter, Respondent filed a Notice of Defense requesting a
23 hearing.
24

25 2. License History. Respondent was licensed by the
26 Department as a real estate salesperson on or about December 5,
27

1 1994. Respondent is currently employed in real estate sales by
2 Silvercrest Realty, Inc. in Corona, California, operating under
3 the fictitious business name of Century 21 Super Stars.

4 3. Conviction. On November 6, 2002, in the Superior
5 Court of California, Harbor Judicial District, County of Orange,
6 Case No. CM02HM07859, Respondent was convicted on his guilty plea
7 of making an annoying phone call using obscene language and
8 threats to inflict injury on another person, in violation of
9 California Penal Code Section 653(m), a misdemeanor.

10 4. Sentence. Respondent was sentenced to serve a
11 three year summary probation; ordered to pay a restitution fine
12 of \$100; donate \$300 to Victim Witness Emergency Fund; serve
13 fifteen (15) days of community service with Caltrans; ordered not
14 to have any contact with victim Ruth Maiten, or her business
15 office, Brigg's Realty; and, ordered to attend a ten week Anger
16 Management Course.

17
18 Respondent's probation is scheduled to terminate on or
19 about November 6, 2005. The conviction has not been expunged.

20 5. Facts and Circumstances of the Conviction.

21 Respondent was the seller's agent for seller Lois M.
22 Count's ("Seller") real property transaction. Ruth Maiten, the
23 victim herein, was working as a real estate broker-associate for
24 Briggs Realty, and was the buyer's agent.

25 6. Respondent mistakenly assumed that Ruth Maiten
26 ("Maiten") was acting unethically in Seller's transaction by
27

1 "going behind" him. Respondent telephoned Maiten (who he
2 testified he was mad at for not returning his telephone calls),
3 and left her a message on her voice mail that he would "knock her
4 fucking teeth in" and for her to "watch your back."

5 7. Factors in Mitigation

6 Respondent admits his conviction and underlying
7 offense. Respondent has not been the subject of previous
8 discipline by the Department nor have there been any complaints
9 regarding his performance as a real estate salesperson.

10 Respondent testified that immediately after his obscene
11 and threatening telephone call to Ruth Maiten he left a voice
12 mail message apologizing and admitted wrongdoing. No evidence of
13 such a voice mail message was presented by Respondent, or
14 acknowledged by Ruth Maiten. Ruth Maiten testified that she
15 remembered receiving a faxed apology after a police officer spoke
16 with Respondent.

17
18 8. Factors in Aggravation

19 Respondent had previously made rude, disparaging and
20 uncivil telephone calls to the Briggs Realty office including
21 referring to Ruth Maiten as a "bitch" to her co-worker Katie
22 Clark. Respondent also made demeaning remarks to a staff member
23 at Briggs Realty, calling her "stupid."

24 Maiten, who had never met Respondent, informed the
25 office personnel of Respondent's call. Trisha Briggs, Cynthia
26 Condit, Katie Clark, as well as Maiten herself, were afraid
27

1 because they knew Respondent did not know what Maiten looked like
2 and were concerned for their own safety.

3 9. Witnesses on Respondent's Behalf.

4 No witnesses appeared on Respondent's behalf.

5 CONCLUSIONS OF LAW

6 1. Cause exists to discipline Respondent RUDY TIM
7 LOZANO's real estate salesperson license under the provisions of
8 Business and Professions Code Sections 490 and 10177(b) in that
9 Respondent was convicted and was sentenced on November 6, 2002
10 for the misdemeanor crime of making an obscene and annoying
11 telephone call. The telephone call made to real estate broker-
12 associate Ruth Maiten occurred during the course of the Seller's
13 real estate transaction, as set forth in Findings 5 and 6.

14 Respondent was convicted upon his guilty plea and
15 thereby stood convicted. Rubenstein v. Reinecke (1977) 71 Cal.
16 App 3d 406).

17
18 2. This crime is substantially related to the
19 qualifications, functions or duties of a licensed real estate
20 licensee.

21 3. Cause to issue a restricted real estate
22 salesperson license was not established as is discussed below.

23 4. All evidence presented as mitigation and
24 rehabilitation has been considered.

25 5. Contrary to the conclusion of the Administrative
26 Law Judge, I do not feel the public interest would be
27

1 adequately served or protected if Respondent were granted a
2 restricted real estate license. The Administrative Law Judge
3 proposed that Respondent's real estate salesperson's license
4 be revoked, but provided for the issuance of a restricted
5 license on terms and conditions for a two (2) year period of
6 time before Respondent becomes eligible to apply for the
7 removal of any of the conditions, limitations or restrictions
8 attaching to a restricted license.

9 Real estate sales transactions in California are
10 often hard fought, tense and contentious. Respondent's
11 behavior toward his fellow agent cannot be justified by the
12 transaction particulars. In light of the serious nature of
13 the crime, insufficient time has elapsed to determine that
14 Rehabilitated is rehabilitated, as discussed below.

15
16 6. A. Criteria of Rehabilitation:

17 1. Criteria of Rehabilitation (Revocation or
18 Suspension) have been developed by the Department pursuant to
19 Section 482(b) of the Business and Professions Code for the
20 purpose of evaluating the rehabilitation of a licensee against
21 whom an administrative disciplinary proceeding for revocation or
22 suspension of the license has been initiated on account of
23 a crime committed by the licensee. Said criteria are set
24 forth at Section 2912, Title 10, Chapter 6, California Code
25 of Regulations ("Regulations").

26 ///
27

1 2. Each of the Criteria of Rehabilitation is
2 discussed below as it pertains to Respondent:

3 Regulation (a): Less than two (2) years have elapsed
4 since Respondent's substantially related November 6, 2002,
5 conviction for an obscene and threatening telephone call to
6 victim Ruth Maiten.

7 Regulation (b): The Court required Respondent to pay a
8 restitution fine of \$100 and donate \$300 to victim Witness
9 Emergency Fund which he paid and donated.

10 Regulation (c): Respondent's November 6, 2002,
11 conviction has not been expunged or dismissed. In California
12 there is no per se rehabilitation in any event. William Opdyk v.
13 Cal. Horse Racing Board (1995) 34 Cal. App. 1826.

14 Regulation (d): This Regulation is not applicable
15 because the underlying offense does not require registration as a
16 sex offender pursuant to Penal Code Section 290.

17 Regulation (e): Respondent remains on probation until
18 November 6, 2005.

19 Regulation (f): There is no evidence that Respondent's
20 criminal conduct was related to alcohol or drug abuse.

21 Regulation (g): Fines in this case have been paid.

22 Regulation (h): Correction of business practices
23 causing injury or the potential thereof was not at issue.

24 Regulation (i): No objective evidence of new and
25 different social and business relationships was presented.
26

27

1 Regulation (j): Stability of family life is not an
2 issue related to the conviction in this case.

3 Regulation (k): There is no evidence of Respondent's
4 enrollment in or completion of educational or training courses.
5 However, if Respondent's license is renewed prior to its
6 expiration in August 19, 2007, he must take required continuing
7 education courses.

8 Regulation (l): There is no evidence of significant
9 and conscientious involvement in community, church or privately-
10 sponsored programs designed to provide social benefits or to
11 ameliorate social problems was presented.

12 Regulation (m): Other than respondent's self serving
13 testimony, no valid evidence from family members, friends, co-
14 workers, employees or persons familiar with the licensee's
15 previous conduct and with subsequent attitudes and behavioral
16 patterns was presented.

17
18 A longer period of time is necessary to establish
19 rehabilitation. Respondent threatened violent physical harm
20 against a fellow colleague in a real estate transaction and he
21 remains on probation until November 2005.

22 ///

23 7. In reviewing the "Criteria for Rehabilitation" set
24 forth above, it is hereby determined that rehabilitation is not
25 complete.

26 ///

27

1 8. Reasonable minds may differ as to the propriety of
2 the penalty given, Golde v. Fox (1979) 98 Cal. App. 3rd 167, 188-
3 189; however, under Business and Professions Code Section 10077,
4 the degree of discipline/penalty imposed is a matter squarely
5 within the discretion of the Real Estate Commissioner. "The
6 public exposing themselves to a real estate licensee has reason
7 to believe the licensee must have demonstrated a degree of
8 honesty and integrity in order to have obtained a license", supra
9 at 178.

10 9. The disciplinary procedures provided for in the
11 Real Estate Law are intended to protect the public when they deal
12 with real estate licensees (Business and Professions Code Section
13 10050 and Handeland v. DRE (1975) 58 Cal. App. 513.). The
14 purpose of these disciplinary procedures is not penal. Hughes v.
15 Board of Architectural Examiners (1998) 17 Cal. 4th 763, 786-787.
16

17 10. A restricted license allows a licensee to do the
18 same things and perform the same acts as all licensees. No one
19 can constantly monitor all activity. Therefore, the Department's
20 most effective means of protecting the public is denial of
21 licensure if there is doubt about rehabilitation at least until
22 Respondent completes probation. Respondent's attendance and
23 completion of a ten week Anger Management Diversion Program is
24 insufficient to establish rehabilitation.

25 11. California courts have held that little weight is
26 placed on the fact that a licensee did not commit additional
27

1 crimes while in prison, or while on parole or probation. (See In
2 re Menna (1995) 11 Cal.4th 975; Seide v. Committee of Bar
3 Examiners (1989) 49 Cal.3d 933). In re Gossage, supra, the court
4 noted that persons under the direct supervision of correctional
5 authorities are required to behave in an exemplary fashion and
6 gave little weight to the fact that a licensee did not commit
7 additional crimes during the period of probation or while engaged
8 in the disciplinary process. Such is the case with Respondent.
9 Whether Respondent is a low risk to engage in recidivism or will
10 continue to avoid committing crimes is unknown. After Respondent
11 has spent a period of time without the supervision of the
12 criminal justice system, his actions can again be evaluated and
13 his level of rehabilitation can be more accurately determined.

14 Weighing the totality of the record presented and
15 for all of the above reasons, the following Order is
16 appropriate.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27

Handwritten notes:
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
JUN -3 2004
DEPARTMENT OF REAL ESTATE

By *K. Mederholt*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

In the Matter of the Accusation of)	No. H-30750 LA
RUDY TIM LOZANO,)	L-2004030792
Respondent.)	

NOTICE

TO: RUDY TIM LOZANO, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated May 4, 2004, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated May 4, 2004, 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 April 22,

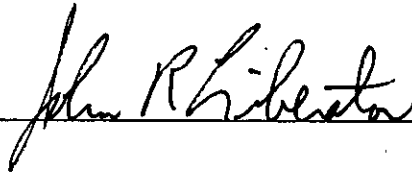
1 2004, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of April 22, 2004, at the Los Angeles office
6 of the Department of Real Estate unless an extension of the time
7 is granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Los Angeles office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: June 1, 2004

14
15 JOHN R. LIBERATOR
Acting Real Estate Commissioner

16
17 
18
19
20
21
22
23
24
25
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

RUDY TIM LOZANO,

Respondent.

Case No.: H-30750 LA

OAH No.: L2004030792

PROPOSED DECISION

On April 22, 2004, in Los Angeles, California, Milford A. Maron, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant was represented by Elliott Mac Lennan, Staff Counsel.

Respondent, Rudy Tim Lozano, appeared in person and represented himself.

Oral and documentary evidence were received, the record was closed and the matter was submitted for decision.

1

Maria Suarez, Complainant, is a Deputy Real Estate Commissioner of the State of California and made the Accusation in her official capacity.

2

Respondent, Rudy Tim Lozano, was originally licensed by the Department of Real Estate as a Real Estate Salesperson on December 5, 1994, and is currently licensed.

3

A. On November 6, 2002, in the Superior Court of California, in and for the County of Orange, Harbor Judicial District, State of California, in Case No. CM02HM07859, respondent was convicted of violating Penal Code Section 653(m) (annoying phone calls – obscene language and threats to inflict injury on another person), a misdemeanor. Said crime involves moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee.

B. Respondent fulfilled all the obligations imposed by the court, including fines and community service.

4

Respondent became overly frustrated in a real estate sales transaction and over-reacted. He had no intention of acting out his threats which were made to a real estate broker on the other end of a sales transaction. There is no question the recipient and her employees were frightened by the threats.*

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

1

Respondent's conviction constitutes grounds for the discipline of his license pursuant to Business and Professions Code Sections 490 and 10177(b).

2

Respondent's contrition and the severity of his sentence, have dramatized the fact that such misconduct is not likely to be repeated. Therefore, he is a likely candidate for a restricted license.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's salesperson's license is revoked; provided, however, in its stead a restricted real estate salesperson's license shall be issued to him pursuant to Section 10153.5 of the Business and Professions Code. The restricted license issued to respondent shall be subject to all of the provisions of Section 10153.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10153.5 of said 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:

* "Knock your fucking teeth in" and "watch your back"


NOT ADOPTED

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 this 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 attaching to the restricted license until two (2) years have elapsed from the date of issuance of the restricted license to respondent.

Dated: May 4, 2004


MILFORD A. MARON
Administrative Law Judge
Office of Administrative Hearings

MAM:rfm

Handwritten signature

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
APR - 8 2004
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

RUDY TIM LOZANO,

By *K. Meierholz*

Case No. H-30750 LA

OAH No. L-2004030792

}
}

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at **320 W. Fourth Street, Ste. 630, Los Angeles, CA** on **April 22, 2004**, at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: APR - 8 2004

By *elliott*
ELLIOTT MAC LENNAN, Counsel

cc: Rudy Tim Lozano
Silvercrest Realty Inc.
Sacto/OAH/DW

Handwritten initials

FILED
MAR - 8 2004
DEPARTMENT OF REAL ESTATE

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

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

By *K. Knecht*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-30750 LA
)	
RUDY TIM LOZANO,)	<u>ACCUSATION</u>
)	
Respondent.)	
)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against RUDY TIM LOZANO, is informed and alleges in her official capacity as follows:

1.

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

///
///
///

2.

1 Respondent was originally licensed by the Department of
2 Real Estate of the State California as a real estate salesperson
3 on December 5, 1994.
4

3.

5
6 On November 6, 2002, in the Superior Court of
7 California, County of Orange, Harbor Judicial District, State of
8 California, in Case No. CM02HM07859, respondent was convicted
9 upon a guilty plea to one count of Penal Code Section
10 653(m) (annoying phone calls - obscene language and threats to
11 inflict injury on another person), a misdemeanor.
12

4.

13 This crime alleged in Paragraph 3 by its facts and
14 circumstances involves moral turpitude and is substantially
15 related under Section 2910(a)(8), Chapter 6, Title 10 of the
16 California Code of Regulations, to the qualifications, functions
17 or duties of a real estate licensee.
18

5.

19 The facts as alleged in Paragraph 3, above, constitutes
20 cause for the suspension or revocation of the license and license
21 rights of respondent under Sections 490 and/or 10177(b) of the
22 Code.
23

24 ///

25 ///

26 ///

27

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof therof, a decision be rendered imposing disciplinary action
4 against the license and license rights of respondent RUDY TIM
5 LOZANO under the Real Estate Law (Part 1 of Division 4 of the
6 Business and Professions Code) and for such other and further
7 relief as may be proper under other applicable provision of law.

8 Dated at Los Angeles, California

9 This *27th* day of *February* 2004.
10
11

12
13 
14 Deputy Real Estate Commissioner
15
16
17
18
19
20
21
22

23 cc: Rudy Tim Lozano
24 Silvercrest Realty Inc.
25 Maria Suarez
26 Sacto
27 DKW