

1 3. (A) On or about February 24, 2004, before the
2 Superior Court of California, County of Los Angeles, State of
3 California, in People v. Daniel Montoya Andrade, Case No.
4 3NE02387, Respondent was convicted on his plea of nolo contendere
5 of corporal injury to a spouse/cohabitant/child's parent in
6 violation of Penal Code Section 273.5, subdivision (a), a
7 misdemeanor and crime involving moral turpitude.

8 (B) As a result of his plea, proceedings were
9 suspended and Respondent was placed on summary probation for
10 three years on condition, in part, that he perform 200 hours of
11 community service; pay restitution to the State Restitution Fund;
12 obey all laws and orders of the court; not own, use, or possess
13 any dangerous or deadly weapons, complete a 12-month batterer's
14 counseling program; and not use force or violence against anyone.
15 The Court issued a protective order directing Respondent not to
16 harass or molest anyone involved in the case. Thereafter, the
17 victim in the case, Jacky Andrade, who is the Respondent's wife,
18 appeared in court and requested that the Court modify the
19 protective order so that Respondent may have contact with her.
20 The Court granted the modification. Respondent has performed the
21 community service and made payment to the Restitution Fund.
22 Respondent will complete probation in February 2007.

23 (C) Respondent testified that the facts and
24 circumstances of his conviction were that, on or about September
25 8, 2003, he got into a heated argument with his wife, Jacky
26 Andrade. At the time of the incident, Jacky Andrade had been
27 drinking and taking medication for an undisclosed mental illness.

1 Respondent tried to leave the home, but his wife would not let
2 him leave. Jacky Andrade threw a cellular phone and a remote
3 control at Respondent.

4 (D) Respondent's conviction for corporal injury
5 to his spouse was for a crime substantially related to the
6 qualifications, functions or duties of a licensed real estate
7 salesperson under California Code of Regulations, Title 10,
8 Section 2910, subdivision (a)(8).

9 4. (A) On or about November 6, 2003, before the
10 Superior Court of California, County of Ventura, State of
11 California, in People v. Daniel Montoya Andrade, Case No.
12 2001034819 MA, Respondent was convicted on his plea of nolo
13 contendere of driving while having a 0.08% or higher blood
14 alcohol in violation of Vehicle Code Section 23152, subdivision
15 (b), and having a concealed firearm in his vehicle in violation
16 of Penal Code Section 12025, subdivision (a)(1), both
17 misdemeanors and crimes not necessarily involving moral
18 turpitude.

19 (B) As a result of his plea, imposition of
20 sentence was suspended and Respondent was placed on three years
21 formal probation on condition, in part, that he complete a first
22 offender Drinking Driver Program for 90 days; pay a fine of
23 \$1,480; not own, possess, or have immediate access to any
24 firearm; and participate in the work release program. Respondent
25 has completed the first offender Drinking Driver Program and paid
26 a fine. Respondent will complete probation for this conviction in
27 May 2007.

1 (C) Respondent testified that the facts and
2 circumstances of his conviction were that, on or about October 6,
3 2001, he drove his vehicle after he had consumed some drinks with
4 friends. Respondent was in the U.S. Marine Corps and had just
5 been notified of the activation of his unit. Fellow Marines had
6 asked Respondent to go out for drinks before he left for the base
7 the next morning. Afterwards, Respondent drove his vehicle to
8 his girlfriend's house to give her the news of his unit's
9 activation. On the way to his girlfriend's home, Respondent made
10 a sudden stop and was detained by the police. Respondent had his
11 gear, bag and a nine millimeter Berretta in the back seat of his
12 sports utility vehicle. Respondent was going to take the gun to
13 the base with him the next day so that he could sell it to the
14 armory. The gun was inside the case and it was not loaded. The
15 magazine was away from the weapon and it was sealed in the
16 carrying case. Thus, the weapon was not loaded and not readily
17 available to Respondent while he was driving. The gun was a
18 personal registered weapon which was government issued for police
19 officers. Respondent had to pass only one more test to become a
20 military police officer. The dimensions of the carrying case
21 were about 10 by 14 inches and, therefore, the case would not fit
22 into the vehicle's glove compartment.

23 (D) Respondent's single conviction for driving
24 while having a 0.08% or higher blood alcohol was not for a crime
25 substantially related to the qualifications, functions or duties
26 of a licensed real estate salesperson under California Code of
27 Regulations, Title 10, Section 2910, subdivision (a)(11).

1 Respondent's conviction for having a concealed firearm in his
2 vehicle was for a crime substantially related to the
3 qualifications, functions or duties of a licensed real estate
4 salesperson in that he willfully violated a statutory requirement
5 that he obtain a license or permit before carrying a firearm in
6 his vehicle under California Code of Regulations, Title 10,
7 Section 2910, subdivision (a)(7).

8 5. (A) On or about October 30, 2002, before the
9 Superior Court of California, County of Ventura, State of
10 California, in People v. Daniel Montoya Andrade, Case No.
11 2001040026 MA, Respondent was convicted on his plea of nolo
12 contendere of battery in violation of Penal Code Section 243,
13 subdivision (e)(1), a misdemeanor and a crime not necessarily
14 involving moral turpitude.

15 (B) As a result of his plea, imposition of
16 sentence was suspended and Respondent was placed on three years
17 formal probation on condition, in part, that he attend 52 weekly
18 sessions of domestic violence counseling, participate for 8 hours
19 in the Direct Work Program, pay \$300 to the Ventura County
20 Women's Shelters, and pay fees and a restitution fine of \$200.
21 Respondent has completed the above terms, but he continues to be
22 on probation until a date that was not established by the
23 evidence.

24 (C) Respondent testified that the facts and
25 circumstances of his conviction were that, on or about September
26 13, 2001, he was arrested by police for committing battery
27 against Evette Gonzalez, his former girlfriend and the mother of

1 his daughter. Respondent went to Ms. Gonzalez' residence after a
2 telephone conversation with her led him to believe that something
3 was wrong. Respondent thought Ms. Gonzalez to have been an unfit
4 mother and suspected that she was involved with someone else
5 after Ms. Gonzalez kept asking for more money to support their
6 then one-year-old daughter. Respondent was holding his daughter
7 and trying to prevent Ms. Gonzalez from taking the baby when he
8 extended his arm and made contact with her shoulder. Respondent
9 admitted that this incident was due to lack of good judgment and
10 frustration he felt with Ms. Gonzalez.

11 (D) Respondent's conviction for battery was for a
12 crime substantially related to the qualifications, functions or
13 duties of a licensed real estate salesperson under California
14 Code of Regulations, Title 10, Section 2910, subdivision (a)(8).

15 6. Respondent has a high school diploma and has to
16 complete about 9 or 12 units to obtain an associate in arts
17 degree. He has not been able to complete his course of study due
18 to his full-time employment.

19 7. Since April 2004 Respondent has been employed at
20 3rd Sky Mortgage as a real estate agent assistant. Respondent's
21 employer is supportive of his application for a real estate
22 salesperson license. Yolanda Davalos Gonzalez, Respondent's
23 employing broker, submitted a letter of reference on his behalf.
24 Ms. Gonzalez has reviewed all of the convictions set forth in the
25 Statement of Issues. Ms. Gonzalez would continue to supervise
26 and employ Respondent if he is granted a restricted salesperson
27 license. Ms. Gonzalez finds Respondent is an excellent employee

1 because he has shown diligence, honesty and integrity in his work
2 at 3rd Sky Mortgage. Respondent has taken three 2-day real estate
3 seminars at his own expense.

4 8. Respondent joined the U.S. Marine Corps in May
5 1998. He was on active duty from February 2002 through May 2005.
6 During his deployment, Respondent was selected to instruct
7 Marines in combat training. He has completed his enlistment. As
8 a result of being on active duty, the court proceedings in
9 Findings of Fact 4 and 5 above did not conclude until 2003, even
10 though the incidents took place in 2001, which is four years
11 ago. As a result of the delays due to his activation, Respondent
12 continues to be on probation.

13 9. Respondent does not deny his convictions. He has
14 learned from the incidents and he now has matured and attained
15 better judgment. Respondent attended the Cornerstone Counseling
16 program for 12 months. The counseling has helped him communicate
17 better and he now makes better decisions. This has improved
18 Respondent's relationship with his wife and he now listens to
19 what she has to say.

20 10. Respondent has been married to his wife, Jacky
21 Andrade, for three and a half years. As a result of the
22 counseling, Respondent and his wife are now able to communicate
23 and support each other. Respondent has a relationship with his
24 now 4-year-old daughter and pays child support. He attends church
25 and gives to charity on a monthly basis. He provides fitness
26 training at the Boys and Girls Club and at a local fitness center
27 to youth who cannot afford fitness training otherwise. He

1 completed community service, which was a humbling experience for
2 him. He is focused on his goal of becoming a licensed real estate
3 salesperson.

4 CONCLUSIONS OF LAW

5 1. Grounds exist to deny Respondent's application for
6 a real estate salesperson's license under Business and
7 Professions Code Section 480, subdivision (a), for his criminal
8 convictions, which are substantially related to the duties,
9 qualifications and functions of a real estate salesperson's
10 license, as set forth in Findings of Fact 3-5 above.

11 2. Grounds exist to deny Respondent's application for
12 a real estate salesperson's license under Business and
13 Professions Code Section 10177, subdivision (b), for his criminal
14 conviction for corporal injury to a spouse, which is a crime
15 involving moral turpitude and is substantially related to the
16 duties, qualifications and functions of a real estate salesperson
17 license, as set forth in Findings of Fact 3 above. (See People v.
18 Rodriguez (1992) 5 Cal 4th 1398, where the court held "to violate
19 Penal Code Section 273.5 the assailant must, at the very least,
20 have set out, successfully, to injure a person of the opposite
21 sex in a special relationship for which society rationally
22 demands, and the victim may reasonably expect stability and
23 safety, and in which the victim, for these reasons among others,
24 may be especially vulnerable. To have joined in, and thus
25 necessarily to be aware of, that special relationship, and then
26 to violate it willfully and with intent to injure, necessarily
27 connotes the general readiness to do evil that has been held to

1 define moral turpitude.")

2 3. It was not established that Respondent's conviction
3 for battery, as set forth in Findings of Fact 5 above, was for a
4 crime involving moral turpitude under Business and Professions
5 Code Section 10177, subdivision (b). (See People v. Mansfield
6 (1988) 200 Cal 3rd 82, where the court held felony battery did not
7 rise to the level of moral turpitude, because a battery could be
8 committed without specific intent to injure, whereas moral
9 turpitude requires readiness to do evil.) Furthermore,
10 Respondent's conviction for driving while having a 0.08% or
11 higher blood alcohol and for having a concealed firearm in his
12 vehicle does not demonstrate a readiness to do evil, and thus, is
13 not for crimes involving moral turpitude.

14 4. Rehabilitation - Respondent has substantially
15 complied with many of the Department's rehabilitation criteria
16 set forth in California Code of Regulations, Title 10, Section
17 2911, as follows:

18 (a) More than two years have elapsed since the
19 incidents that gave rise to Respondent's convictions for battery,
20 driving while having a 0.08% or higher blood alcohol, and for
21 having a concealed firearm in his vehicle as set forth in
22 Findings of Fact 4 and 5 [Subdivision (a)];

23 (b) Respondent has made payment to the
24 Restitution Fund as set forth in Findings of Fact 3 and 5
25 [Subdivision (b)];

26 (c) Respondent has paid all fines and monetary
27 penalties imposed in connection with his criminal convictions as

1 set forth in Findings of Fact 4 and 5 above [Subdivision (g)];

2 (d) Respondent has a stable family life and
3 fulfills his parental and familial responsibilities as set forth
4 in Findings of Fact 7, 9 and 10 above [Subdivision (h)];

5 (e) Respondent is significantly involved in the
6 community and church by making monthly charitable contributions
7 and his volunteer work in his community as set forth in Finding
8 of Fact 10 [Subdivision l)];

9 (f) Respondent has established new and different
10 social relationships from those which existed at the time of his
11 crime as set forth in Findings of Fact 7, 9 and 10 above
12 [Subdivision (m)]; and

13 (g) Respondent has demonstrated a change in
14 attitude since his convictions as set forth in Factual Findings
15 7, 9 and 10 [Subdivision (n)].

16 5. Respondent has failed to meet a number of the
17 Criteria of Rehabilitation including 2911(c) Expungement of
18 criminal convictions, 2911(e) Successful completion of probation,
19 and 2911(i) Completion of, or sustained enrollment in, formal
20 educational or vocational training courses for economic self-
21 improvement.

22 6. Given Respondent's history of criminal convictions,
23 and the fact that he has not shown that he is rehabilitated, I
24 disagree with the Administrative Law Judge's conclusion that he
25 does not represent a danger to the public. There is insufficient
26 evidence upon which to base a determination that the public would
27 be adequately protected by the issuance of a restricted license

1 to Respondent. A restricted license allows a Respondent to do
2 the same thing any other licensee can do and no one can
3 constantly monitor all activity. Therefore, our most effective
4 means of protecting the public is to refuse to issue a license
5 when there is any doubt about the licensee's rehabilitation.

6 7. The following order is consistent with the public
7 interest.

8 ORDER

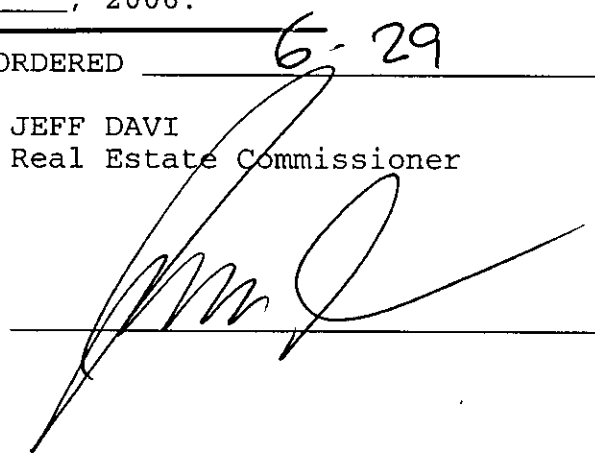
9 The application of Respondent DANIEL MONTOYA ANDRADE
10 for a real estate license is denied.

11 This Decision shall become effective at 12 o'clock noon
12 on July 24, 2006.

13 IT IS SO ORDERED 6-29, 2006.

14 JEFF DAVI
15 Real Estate Commissioner

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FILED
FEB 21 2006
DEPARTMENT OF REAL ESTATE
By *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
DANIEL MONTOYA ANDRADE,)	No. H-31964 LA
Respondent.)	L-2005080431
)	
)	

NOTICE

TO: DANIEL MONTOYA ANDRADE, Respondent, and SCOTT G. LYON, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 16, 2005, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 16, 2005, 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 November 16, ///

1 2005, 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 November 16, 2005, at the Los Angeles
6 office of the Department of Real Estate unless an extension of
7 the time is granted for good cause shown.

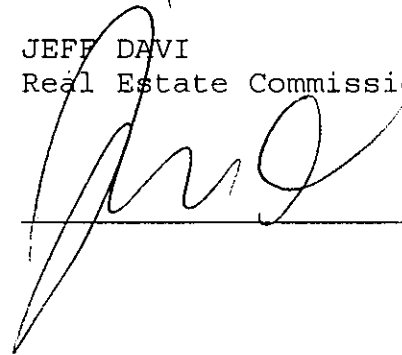
8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Los Angeles office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: _____

2-9-06

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15 JEFF DAVI
16 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

DANIEL M. ANDRADE,

Respondent.

Case No. H-31964 LA

OAH No. L2005080431 .

PROPOSED DECISION

Administrative Law Judge Anahid Hoonanian, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California, on November 16, 2005. James R. Peel, Staff Counsel for the Department of Real Estate, represented complainant. Scott G. Lyon, Attorney at Law, represented respondent.

The Administrative Law Judge received oral and documentary evidence and heard argument from counsel. The record was left open until November 18, 2005, for the purpose of allowing respondent to submit a letter from his current employer. The letter was received, the record was closed, and the matter was submitted for decision on November 18, 2005.

The Administrative Law Judge hereby makes her findings of fact, conclusions of law, and order, as follows:

FINDINGS OF FACT

1. The Administrative Law Judge takes official notice that, on May 26, 2005, complainant Janice Waddell in her official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter Department), filed the Statement of Issues, Case No. H-31964 LA.

2. (A) On or about June 4, 2004, Daniel Montoya Andrade (hereinafter respondent), filed a Salesperson License Application with the Department pursuant to Business and Professions Code section 10153.3 for issuance of a real estate salesperson's license.

(B) On his Salesperson License Application, respondent indicated that he been convicted of violations of the law.

3. (A) On or about February 24, 2004, before the Superior Court of California, County of Los Angeles, State of California, in People v. Daniel Montoya Andrade, Case No.

3NE02387, respondent was convicted on his plea of nolo contendere of corporal injury to a spouse/cohabitant/child's parent in violation of Penal Code section 273.5 subdivision (a), a misdemeanor and crime involving moral turpitude.

(B) As a result of his plea, proceedings were suspended and respondent was placed on summary probation for three years on condition, in part, that he perform 200 hours of community service, pay restitution to the State Restitution Fund, obey all laws and orders of the court, not own, use, or possess any dangerous or deadly weapons, complete a 12-month batterer's counseling program, and not use force or violence against anyone. The Court issued a protective order directing respondent not to harass or molest anyone involved in the case. Thereafter, the victim in the case, Jacky Andrade, who is the respondent's wife, appeared in court and requested that the Court modify the protective order so that respondent may have contact with her. The Court granted the modification. Respondent has performed the community service and made payment to the Restitution Fund. Respondent will complete probation in February 2007.

(C) The facts and circumstances of respondent's conviction were that, on or about September 8, 2003, respondent got into a heated argument with his wife, Jacky Andrade. At the time of the incident, Jacky Andrade had been drinking and taking medication for an undisclosed mental illness. Respondent tried to leave the home, but his wife would not let him leave. Jacky Andrade threw a cellular phone and a remote control at respondent. Respondent did not retaliate; he did not hit or kick Jacky Andrade. A neighbor heard the argument and called the police.

(D) Respondent's conviction for corporal injury to his spouse was for a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson under California Code of Regulations, title 10, section 2910, subd. (a)(8).

4. (A) On or about November 6, 2003, before the Superior Court of California, County of Ventura, State of California, in People v. Daniel Montoya Andrade, Case No. 2001034819 MA, respondent was convicted on his plea of nolo contendere of driving while having a 0.08% or higher blood alcohol in violation of Vehicle Code section 23152, subdivision (b), and having a concealed firearm in his vehicle in violation of Penal Code section 12025, subdivision (a)(1), both misdemeanors and crimes not necessarily involving moral turpitude.

(B) As result of his plea, imposition of sentence was suspended and respondent was placed on three years formal probation on condition, in part, that he complete a first offender Drinking Driver Program for 90 days, pay a fine of \$1,480, not own, possess, or have immediate access to any firearm, and participate in the work release program. Respondent has completed the first offender Drinking Driver Program and paid a fine. Respondent will complete probation for this conviction in May 2007.

(C) The facts and circumstances of respondent's conviction were that, on or about October 6, 2001, respondent drove his vehicle after he had consumed some drinks with

friends. Respondent was in the U.S. Marine Corps and had just been notified of the activation of his unit. Fellow Marines had asked respondent to go out for drinks before he left for the base the next morning. Afterwards, respondent drove his vehicle to his girlfriend's house to give her the news of his unit's activation. On the way to his girlfriend's home, respondent made a sudden stop and was detained by the police. Respondent had his gear, bag, and a nine millimeter Berretta in the back seat of his sports utility vehicle. Respondent was going to take the gun to the base with him the next day so that he could sell it to the armory. The gun was inside the case and it was not loaded. The magazine was away from the weapon and it was sealed in the carrying case. Thus, the weapon was not loaded and not readily available to respondent while he was driving. The gun was a personal registered weapon which was government issued for police officers. Respondent had to pass only one more test to become a military police officer. The dimensions of the carrying case were about 10 by 14 inches, and therefore, the case would not fit into the vehicle's glove compartment.

(D) Respondent's single conviction for driving while having a 0.08% or higher blood alcohol was not for a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson under California Code of Regulations, title 10, section 2910, subd. (a)(11). Respondent's conviction for having a concealed firearm in his vehicle was for a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson in that he willfully violated a statutory requirement that he obtain a license or permit before carrying a firearm in his vehicle under California Code of Regulations, title 10, section 2910, subd. (a)(7).

5. (A) On or about October 30, 2002, before the Superior Court of the Superior Court of California, County of Ventura, State of California, in People v. Daniel Montoya Andrade, Case No. 2001040026 MA, respondent was convicted on his plea of nolo contendere of battery in violation of Penal Code section 243, subdivision (e)(1), a misdemeanor and a crime not necessarily involving moral turpitude.

(B) As result of his plea, imposition of sentence was suspended and respondent was placed on three years formal probation on condition, in-part, that he attend 52 weekly sessions of domestic violence counseling, participate for 8 hours in the Direct Work Program, pay \$300 to the Ventura County Women's Shelters, and pay fees and a restitution fine of \$200. Respondent has completed the above terms, but he continues to be on probation until a date that was not established by the evidence.

(C) The facts and circumstances of respondent's conviction were that, on or about September 13, 2001, respondent was arrested by police for committing battery against Evette Gonzalez, his former girlfriend and the mother of his daughter. Respondent went to Ms. Gonzalez's residence after a telephone conversation with her led him to believe that something was wrong. Respondent thought Ms. Gonzalez to have been an unfit mother and suspected that she was involved with someone else after Ms. Gonzalez kept asking for more money to support their then one-year-old daughter. Respondent was holding his daughter and trying to prevent Ms. Gonzalez from taking the baby when he extended his arm and

made contact with her shoulder. Respondent admitted that this incident was due to lack of good judgment and frustration he felt with Ms. Gonzalez. As part of the proceedings in the criminal matter, Ms. Gonzalez submitted a letter to the court stating that on the night in question, when Mr. Andrade came over, she was with another man. It was established by Ms. Gonzalez's letter that even though respondent was upset, he did not assault her or hurt her physically. Ms. Gonzales corroborates that respondent never physically touched her in any aggressive manner, and, as the victim, she did not want the criminal case to proceed.

(D) Respondent's conviction for battery was for a crime substantially related to the qualifications, functions, or duties of a licensed real estate salesperson under California Code of Regulations, title 10, section 2910, subd. (a)(8).

6. Respondent has a high school diploma and has to complete about 9 or 12 units to obtain an associate in arts degree. He has not been able to complete his course of study due to his full-time employment.

7. Since April 2004, Respondent has been employed at 3rd Sky Mortgage as a real estate agent assistant. Respondent's employer is supportive of his application for a real estate salesperson's license. Yolanda Davalos Gonzalez, respondent's employing broker, submitted a letter of reference on his behalf. Ms. Gonzalez has reviewed all of the convictions set forth in the Statement of Issues. Ms. Gonzalez would continue to supervise and employ respondent if he is granted a restricted salesperson license. Ms. Gonzalez finds respondent is an excellent employee because he has shown diligence, honesty and integrity in his work at 3rd Sky Mortgage. Respondent has taken three 2-day real estate seminars at his own expense.

8. Respondent joined the U.S. Marine Corps in May 1998. He was on active duty from February 2002 through May 2005. During his deployment, respondent was selected to instruct Marines in combat training. He has completed his enlistment. As a result of being on active duty, the court proceedings in Findings of Fact 4 and 5 above did not conclude until 2003, even though the incidents took place in 2001, which is four years ago. As a result of the delays due to his activation, respondent continues to be on probation.

9. Respondent does not deny his convictions. He has learned from the incidents and he now has matured and attained better judgment. Respondent attended the Cornerstone Counseling program for 12 months. The counseling has helped him communicate better and he now makes better decisions. This has improved respondent's relationship with his wife and he now listens to what she has to say.

10. Respondent has been married to his wife, Jacky Andrade, for three and a half years. As a result of the counseling, respondent and his wife are now able to communicate and support each other. Respondent has a relationship with his now 4-year-old daughter and pays child support. He attends church and gives to charity on a monthly basis. He provides fitness training at the Boys and Girls Club and at a local fitness center to youth who cannot

afford fitness training otherwise. He completed community service, which was a humbling experience for him. He is focused on his goal of becoming a licensed real estate salesperson.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

CONCLUSIONS OF LAW

1. Grounds exist to deny respondent's application for a real estate salesperson's license under Business and Professions Code section 480, subdivision (a), for his criminal convictions, which are substantially related to the duties, qualifications, and functions of a real estate salesperson's license, as set forth in Findings of Fact 3-5 above.

2. Grounds exist to deny respondent's application for a real estate salesperson's license under Business and Professions Code section 10177, subdivision (b), for his criminal conviction for corporal injury to a spouse, which is a crime involving moral turpitude and is substantially related to the duties, qualifications, and functions of a real estate salesperson licensee, as set forth in Findings of Fact 3 above. (See *People v. Rodriguez* (1992) 5 Cal 4th 1398, where the court held "to violate Penal Code section 273.5 the assailant must, at the very least, have set out, successfully, to injure a person of the opposite sex in a special relationship for which society rationally demands, and the victim may reasonably expect, stability and safety, and in which the victim, for these reasons among others, may be especially vulnerable. To have joined in, and thus necessarily to be aware of, that special relationship, and then to violate it willfully and with intent to injure, necessarily connotes the general readiness to do evil that has been held to define moral turpitude.")

3. It was not established that respondent's conviction for battery, as set forth in Findings of Fact 5 above, was for a crime involving moral turpitude under Business and Professions Code section 10177, subdivision (b). (See *People v. Mansfield* (1988) 200 Cal 3rd 82, where the court held felony battery did not rise to the level of moral turpitude, because a battery could be committed without specific intent to injure, whereas moral turpitude requires readiness to do evil.) Furthermore, respondent's conviction for driving while having a 0.08% or higher blood alcohol and for having a concealed firearm in his vehicle does not demonstrate a readiness to do evil, and thus, is not for crimes involving moral turpitude.

4. Rehabilitation - Respondent has substantially complied with many of the Department's rehabilitation criteria set forth in California Code of Regulations, title 10, section 2911, as follows:

- (a) More than two years have elapsed since the incidents that gave rise to respondent's convictions for battery, driving while having a 0.08% or higher blood alcohol, and for having a concealed firearm in his vehicle as set forth in Findings of Fact 4 and 5.

[Subdivision (a)];

- (b) Respondent has made payment to the Restitution Fund as set forth in Findings of Fact 3 and 5.

[Subdivision (b)];

- (c) Respondent has paid all fines and monetary penalties imposed in connection with his criminal convictions as set forth in Findings of Fact 4 and 5 above.

[Subdivision (g)];

- (d) Respondent has a stable family life and fulfills his parental and familial responsibilities as set forth in Findings of Fact 7, 9, and 10 above.

[Subdivision (h)];

- (e) Respondent is significantly involved in the community and church by making monthly charitable contributions and his volunteer work in his community as set forth in Findings of Facts 10.

[Subdivision (l)];

- (f) Respondent has established new and different social relationships from those which existed at the time of his crime as set forth in Findings of Fact 7, 9, and 10 above.

[Subdivision (m)]; and

- (g) Respondent has demonstrated a change in attitude since his convictions as set forth in Factual Findings 7, 9, and 10.

[Subdivision (n)].

5. Notwithstanding Conclusions of Law 1 and 2 above, respondent has demonstrated sufficient rehabilitation following his convictions such that he does not represent a danger to the public and the public will be adequately protected by the issuance of a restricted real estate salesperson's license to respondent.

* * * * *

Wherefore, the following Order is hereby made:

ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the respondent shall be subject to all of the provisions of Section 10156.7 of the Business and

*Not
Adopted*

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:

(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 the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three (3) 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 form 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's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted until respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the respondent of lifting of the suspension.

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5. Pursuant to Business and Professions Code, Section 10154, if respondent has not satisfied the requirements for an unqualified license under Section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: December 16, 2005



Anahid Hoonanian
Administrative Law Judge
Office of Administrative Hearings

SACD
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FILED
MAY 26 2005
DEPARTMENT OF REAL ESTATE
[Signature]

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)
7

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No. H-31964 LA
12 DANIEL MONTOYA ANDRADE,) STATEMENT OF ISSUES
13 Respondent.)
14

15 The Complainant, Janice Waddell, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against DANIEL MONTOYA ANDRADE (Respondent), is informed and
18 alleges in her official capacity as follows:

19 1.

20 On or about June 4, 2004, Respondent applied to the
21 Department of Real Estate of the State of California for a real
22 estate salesperson license with the knowledge and understanding
23 that any license issued as a result of that application would be
24 subject to the conditions of Section 10153.4 of the Business and
25 Professions Code (hereinafter "Code").

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CRIMINAL CONVICTIONS

2.

On or about February 24, 2004, in the Superior Court of California, County of Los Angeles, in Case No. 3NE02387, Respondent was convicted of violating Penal Code Section 273.5(a) (Inflict Corporal Injury on Spouse).

3.

On or about November 17, 2003, in the Superior Court of California, County of Ventura, in Case No. 2001034819MA, Respondent was convicted of violating Vehicle Code Section 23152(b) (Driving while having a 0.08% of Higher Blood Alcohol), and Penal Code 12025(a)(1) (Having Concealed Firearm in Vehicle).

4.

On or about November 17, 2003, in the Superior Court of California, County of Ventura, in Case No. 2001040026MA, Respondent was convicted of violating Penal Code Section 243(e)(1) (Battery).

5.

The matters described in Paragraphs 2, 3 and 4, above, are misdemeanors involving moral turpitude and are substantially related to the functions, duties and responsibilities of a real estate license.

6.

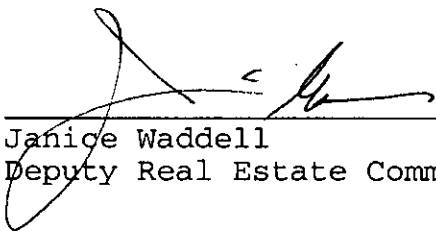
The matters described in Paragraphs 2, 3 and 4, above, each constitute cause for the denial of Respondent's application for a real estate salesperson license under Code Sections 480(a) and/or 10177(b).

1 The Statement of Issues is brought under the provisions
2 of Section 10100, Division 4 of the Business and Professions Code
3 of the State of California and Sections 11500 through 11528 of
4 the Government Code.

5 WHEREFORE, the Complainant prays that the above-
6 entitled matter be set for hearing and, upon proof of the charges
7 contained herein, that the Commissioner refuse to authorize the
8 issuance of, and deny the issuance of, a real estate salesperson
9 license to Respondent DANIEL MONTOYA ANDRADE, and for such other
10 and further relief as may be proper in the premises.

11 Dated at Los Angeles, California,

12 this 23 day of May, 2005.

13
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15 
16 Janice Waddell
17 Deputy Real Estate Commissioner
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22
23

24 cc: Daniel Montoya Andrade
25 Kenneth James Peltz
26 Sacto.
27 Janice Waddell
JL