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**FILED**

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DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
BY: [Signature]

\* \* \* \* \*

In the Matter of the Application of)  
LEO GARCIA,  
Respondent.

No. H-32330 LA  
L-2006030306

DECISION

The Proposed Decision dated August 16, 2006 of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of respondent.

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

IT IS SO ORDERED 9-19-06

JEFF DAVI  
Real Estate Commissioner

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of:

LEO GARCIA

Respondent.

Case No. H-32330 LA

OAH No. L2006030306

**PROPOSED DECISION**

This matter was heard on May 30, 2006, and July 18, 2006, at Los Angeles, California, by Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California.

Complainant Maria Suarez (Complainant), Deputy Real Estate Commissioner, was represented by Alvaro Mejia, Counsel for Department of Real Estate (Department).

Leo Garcia (Respondent) was present and was represented by Peter C. Wittlin, Esq.

Oral and documentary evidence was received and the matter was argued and submitted for decision on July 18, 2006.

FACTUAL FINDINGS

1. Complainant brought the Statement of Issues in her official capacity.
2. Respondent made application to the Department for a real estate salesperson license on November 24, 2003.
3. a. On October 31, 2000, in the Superior Court of California, County of Orange, North Justice Center, in case no. OONM16867, Respondent was convicted, on his plea of guilty, of violating California Penal Code section 273.5, subdivision (a)(Infliction of Corporal Injury on Spouse or Cohabitant), a misdemeanor. Respondent was sentenced to informal probation for three years with terms and conditions which included: no contact with the victim, serve 30 days in jail with credit for six days previously served, pay \$100 to the State Restitution Fund, pay \$200 to the Domestic Violence Prevention Fund, pay \$100 to the Women's Transitional Living Center, perform eight hours of community service, and attend and complete a domestic violence counseling program.

b. The underlying events leading to the conviction were that: Respondent testified that he and his girlfriend had an argument, but that he did not strike her. He indicated that they were in bed, and her hair was "messy", and that the police mistakenly thought Respondent had pulled her hair.

4. In aggravation of Factual Finding 3, on June 20, 2001, in the above-mentioned case, Respondent admitted violating probation by his failure to file a progress report concerning his domestic violence counseling. On the same date, probation was ordered reinstated on the same terms and conditions. On January 3, 2002, in the above-mentioned case, Respondent admitted violating probation. The evidence did not establish how Respondent violated his probation. On the same date, probation was ordered reinstated and modified. As part of the court's modified probation order, Respondent was sentenced to the Orange County jail for 60 days.

5. a. On November 15, 2000, in the Superior Court of California, County of Orange, Central Justice Center, in case no. OOCM08743, Respondent was convicted, on his plea of guilty, of violating California Penal Code section 270 (Failure to Provide for a Minor Child), a misdemeanor. Respondent was sentenced to formal probation for three years with terms and conditions which included: pay overdue child support, perform 80 hours of Cal Trans work, and pay a fine of \$100.

b. The underlying events leading to the conviction were that: Respondent was not a responsible person. He was depressed because all of his money went to child-support payments. Respondent is presently current on his child support payments and his child is now 13 years old.

6. a. On January 11, 2001, in the Superior Court of California, County of Orange, in case no. OONM19293, Respondent was convicted, on his plea of guilty, of violating California Penal Code section 594 (Malicious Mischief), a misdemeanor. Respondent was sentenced to informal probation for three years with terms and conditions that included: serve 15 days in jail and pay a \$100 fine.

b. The underlying events leading to the conviction were that: Respondent rented an apartment in the same complex where his ex-girlfriend lived. However, Respondent had been previously ordered by the criminal court to stay away from his ex-girlfriend. Respondent contended that he did not read the "stay-away" order and that he chose that particular apartment complex because it was convenient for public transportation. After his arrest, Respondent moved out of the apartment complex.

7. a. On January 3, 2002, in the Superior Court of California, County of Orange, North Justice Center, in case no. 01NM17378, Respondent was convicted, on his plea of guilty, of violating California Penal Code section 166, subdivision (a)(4)(Contempt of Court: Disobeying a Court Order), a misdemeanor; and also of violating California Penal Code section 243, subdivision (e)(1)(Battery on Noncohabitating Spouse), a misdemeanor. Respondent was sentenced to informal probation for three years with terms and conditions

which included:, serve 60 days in jail with credit for 13 days previously served, have no contact with the victim, and attend and complete a domestic violence counseling program.

b. The underlying events leading to the conviction were not established. Respondent testified that he could not recall the underlying events leading to this conviction. He believes it involved another argument with his ex-girlfriend.

8. a. On February 28, 2005, in the Superior Court of California, County of Los Angeles, Bellflower Courthouse Division, in case no. 5LC00302, Respondent was convicted, on his plea of guilty, of violating California Vehicle Code section 23152, subdivision (a)(Under the Influence of Alcohol or Drugs in a Vehicle), a misdemeanor. Respondent was sentenced to summary probation for three years with terms and conditions which included: pay \$1,459 in fines, serve 13 days in jail, attend a first-offender alcohol program, and do not drive without a valid license. Respondent's driving privileges were restricted for 90 days wherein Respondent was only allowed to drive to and from work or to his alcohol program.

b. The underlying events leading to the conviction were that: Respondent testified that he was driving home from a club where he had only had one beer. Respondent testified that the police administered a breathalyzer test that showed "no alcohol", but that the police arrested him anyway. Respondent testified that he pled guilty in order to put the matter behind him.

9. a. On or about March 24, 2005, in the Superior Court of California, County of Orange, in case no. 05NM02170, Respondent was convicted, on his plea of guilty, of violating California Vehicle Code section 14601.5, subdivision (a)(Driving with a Suspended License), a misdemeanor. Respondent was sentenced to informal probation for three years with terms and conditions which included: pay a fine of approximately \$655 and do not drive without a valid license.

b. The underlying events leading to the conviction were that: Respondent was driving home from the grocery store. Respondent contended that he thought he could drive in order to handle "obligations" in addition to driving to and from work.

10. Respondent's argument that he did not actually commit some of the above listed crimes is not persuasive. The issue of Respondent's guilt may not be re-litigated. Respondent's entry of the plea of guilty in his criminal cases is conclusive evidence of guilt upon which the administrative law judge must rely. (*Arneson v. Fox* (1980) 28 Cal.3d 440.)

11. In response to Question 25 of his license application, to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE". Respondent answered "Yes", but failed to reveal his November 15, 2000 conviction. Respondent disclosed the other convictions that had occurred at the time of his application.

12. Respondent testified that he is not very experienced in filling out forms and that he did not carefully read the application, causing him to fail to disclose his November 2000 conviction. In mitigation, Respondent did disclose his other convictions and provided criminal court records related to those convictions. In aggravation, Respondent admitted that he had also suffered a conviction in August 2001 that was also not disclosed on his application.<sup>1</sup>

13. Respondent is 34 years old. He has been employed by Sur Pacific Home Loans (Sur) for approximately two years. At Sur, he processes loan applications, opens escrow, orders title, and fills out various forms.

14. Adela Oliveras owns Sur and is a licensed real estate broker. She testified that Respondent is a good worker and has never lost his temper at work. Ms. Oliveras would like Respondent to be able to obtain his real estate salesperson license.

15. Sandra Ramirez, a licensed real estate salesperson, also testified on behalf of Respondent. She works with Respondent on an almost daily basis in arranging financing for her clients. She finds Respondent to be professional, honest, and patient in dealing with her clients. Respondent also offered letters from satisfied people whose loans he helped complete.

### LEGAL CONCLUSIONS AND DISCUSSION

1. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code sections 475, subdivision (a)(2), and 480, subdivision (a)(1), because Respondent has been convicted of crimes which are substantially related to the qualifications, functions, or duties of a real estate salesperson.

#### Substantial Relationship

California Code of Regulations, title 10, section 2910, defines by regulation instances where acts are deemed to be substantially related to the qualifications, functions, or duties of a licensee. Under subdivision (a)(10), conduct which demonstrates a pattern of repeated and willful disregard of the law is substantially related to the qualifications, functions, or duties of a licensee. Respondent was convicted six times between 2000 and 2005. Respondent repeatedly failed to comply with the criminal court's orders regarding probation, staying away specified persons, driving to and from work only. Respondent's acts leading to his convictions, considered along with his inappropriate responses to criminal court orders, show a repeated and willful disregard of the law. (Factual Finding 1-9.)

2. Cause does exist to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b), based on Respondent's conviction for battery.

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<sup>1</sup> This conviction was not alleged as a basis for denial of the license in the statement of issues.

### Moral Turpitude Discussion

a. A criminal conviction can form the basis for denial of an application for a real estate salesperson's license if the crime is a felony or a crime involving moral turpitude. (Bus. and Prof. Code § 10177, subd. (b).) Respondent's convictions for inflicting corporal injury on his girlfriend, malicious mischief, contempt of court, and a second battery on his girlfriend all involve moral turpitude. Respondent's other convictions for failure to pay child support, driving under the influence of alcohol, and driving with a suspended license are not crimes of moral turpitude.

b. Although not amenable to a precise definition, "moral turpitude" connotes "a readiness to do evil, an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1757, quoting from *People v. Mansfield* (1988) 200 Cal.App.3d 82, 87.)

c. Conviction of some crimes, such as murder and fraud, establishes moral turpitude per se. Other crimes do not necessarily establish moral turpitude per se; however, the particular circumstances of the underlying offense must be reviewed to determine if the conviction involved moral turpitude. (*In re Kelley* (1990) 52 Cal.3d 487; *Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630.)

d. A crime of simple battery has been held to not be a crime of moral turpitude per se. (*People v. Mansfield* (1988) 200 Cal.App.3d 82, 87.) In this case however, Respondent battered his girlfriend on more than one occasion and refused to stay away from her when ordered to do so by the criminal court. These convictions took place within an approximately 16 month time period. Viewed together, Respondent's conduct leading to these convictions shows a "readiness to do evil" which is required for a crime to be one of moral turpitude. After his first conviction, Respondent knew what he was doing was wrong, and he chose to continue committing similar criminal acts. (Factual Findings 1-9.)

3. Cause exists to deny Respondent's application for a real estate salesperson license under Business and Professions Code sections 475, subdivision (a)(1), 480, subdivision (c), and 10177, subdivision (a). Respondent's failure to reveal his criminal conviction in his application constitutes making a material and false statement of fact in the application as set forth in Factual Findings 11-12. While Respondent disclosed five of the six convictions at charged in the statement of issues, he failed to reveal one conviction, and he also failed to reveal another conviction that was not charged in the statement of issues. A real estate licensee's functions and duties necessarily require that the person be honest, of good character, and trustworthy. Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If an applicant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate licensee. (*Golde v. Fox* (1979) 98 Cal. App.3d 176.) The Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear. (*Ring v. Smith*

(1970) 5 Cal.App.3d 197, 205; *Golde v. Fox, supra*, 98 Cal.App.3d at p. 177.) A real estate salesperson must also be able to accurately prepare documents. In this case, the burden was on Respondent to accurately prepare his application and to disclose all of his convictions. His failure to do so reflects unfavorably on his honesty.

4. Criteria have been developed by the Department pursuant to Business and Professions Code section 482, subdivision (a), for the purpose of evaluating the rehabilitation of an applicant for licensure who has been convicted of a crime. These criteria, found at California Code of Regulations, title 10, section 2911, are summarized as follows:

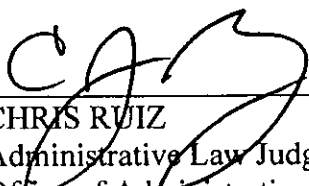
- Subsection(a) passage of at least two years since the conviction;
- Subsection(b) restitution;
- Subsection(c) expungement of the conviction;
- Subsection(d) expungement of the requirement to register as an offender;
- Subsection(e) completion of the criminal probation;
- Subsection(f) abstinence from drugs or alcohol that contributed to the crime;
- Subsection(g) payment of any criminal fines or penalties;
- Subsection(h) stability of family life;
- Subsection(i) enrollment in or completion of educational or training courses;
- Subsection(j) discharge of debts to others;
- Subsection(k) correction of business practices causing injury;
- Subsection(l) significant involvement in community, church or private programs for social betterment;
- Subsection(m) new and different social and business relationships; and
- Subsection(n) change in attitude from the time of conviction to the present, evidenced by testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns.

5. Respondent established some evidence of his rehabilitation. More than two years have passed since some, but not all, of his convictions. None of his convictions have been expunged. Respondent is presently on criminal probation for his two most recent convictions. Respondent appears to now have a more stable lifestyle. Respondent is doing very well working in the real estate industry. This shows that Respondent has begun the rehabilitation process. However, Respondent has a long history of criminal conduct. More time is needed before it can be said that his rehabilitation is complete. Additionally, his recent failure to disclose two of his convictions during the application process shows a lack of complete rehabilitation. (Factual Findings 1-15.)

ORDER

The application of LEO GARCIA for a real estate salesperson license is denied.  
LEO GARCIA shall be allowed to reapply for a real estate license at the earliest date allowed  
by statute.

DATED: August 16, 2006.

  
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CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings



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DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of	)	NO. H- 32330 LA
	)	
LEO GARCIA,	)	
	)	<u>STATEMENT OF ISSUES</u>
	)	
Respondent.	)	
	)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Statement of Issues against LEO GARCIA, aka Leo Gonzalez Garcia, aka Leoncio Garcia Gonzalez, aka, Leonicio Gonzalez, aka Leonzo A. Garcia, aka Leo G. Gonzalez, aka Leoncio Garcia, aka Leonicio Garcia, ("Respondent"), is informed and alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues against Respondent in her official capacity.

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2.

1 Respondent made application to the Department of Real  
2 Estate of the State of California for a real estate salesperson  
3 license on or about November 24, 2003, with the knowledge and  
4 understanding that any license issued as a result of said  
5 application would be subject to the conditions of Business and  
6 Professions Code ("Code") Section 10153.4.  
7

8 3.

9 (CRIMINAL CONVICTIONS)

10 On or about October 31, 2000, in the Superior Court of  
11 California, County of Orange, North Justice Center, in case no.  
12 00NM16867, Respondent was convicted of violating California  
13 Penal Code Section 273.5(a) (Inflict Corporal Injury on  
14 Spouse/Cohabitant), a misdemeanor. The underlying facts of this  
15 crime involve moral turpitude and are substantially related  
16 under Title 10, Chapter 6, Section 2910, California Code of  
17 Regulations, to the qualifications, functions or duties of a  
18 real estate licensee.  
19

20 In aggravation of the above, on or about June 20,  
21 2001, in the above-mentioned case, Respondent admitted violating  
22 probation. On the same date, probation was ordered reinstated  
23 on the same terms and conditions. On or about January 3, 2002,  
24 in the above-mentioned case, Respondent admitted violating  
25 probation. On the same date, probation was ordered reinstated  
26 and modified. As part of the court's modified probation order,  
27

1 Respondent was sentenced to the Orange County jail for sixty  
2 (60) days.

3 4.

4 On or about November 15, 2000, in the Superior Court  
5 of California, County of Orange, Central Justice Center, in case  
6 no. 00CM08743, Respondent was convicted of violating California  
7 Penal Code Section 270 (Failure to Provide for Minor Child), a  
8 misdemeanor. The underlying facts of this crime are  
9 substantially related under Title 10, Chapter 6, Section 2910,  
10 California Code of Regulations, to the qualifications, functions  
11 or duties of a real estate licensee.

12 5.

13 On or about January 11, 2001, in the Superior Court of  
14 California, County of Orange, in case no. 00NM19293, Respondent  
15 was convicted of violating California Penal Code Section 594  
16 (Malicious Mischief), a misdemeanor. The underlying facts of  
17 this crime involve moral turpitude and are substantially related  
18 under Title 10, Chapter 6, Section 2910, California Code of  
19 Regulations, to the qualifications, functions or duties of a  
20 real estate licensee.

21 6.

22 On or about January 3, 2002, in the Superior Court of  
23 California, County of Orange, North Justice Center, in case no.  
24 01NM17378, Respondent was convicted of violating California  
25 Penal Code Section 166(a)(4) (Contempt of Court: Disobey Court  
26 Order), a misdemeanor, and violating California Penal Code  
27

1 Section 243(e)(1) (Battery on Noncohabitating Spouse/Etc.), a  
2 misdemeanor. The underlying facts of this crime involve moral  
3 turpitude and are substantially related under Title 10, Chapter  
4 6, Section 2910, California Code of Regulations, to the  
5 qualifications, functions or duties of a real estate licensee.

6 7.

7 On or about February 28, 2005, in the Superior Court  
8 of California, County of Los Angeles, Bellflower Courthouse  
9 Division, in case no. 5LC00302, Respondent was convicted of  
10 violating California Vehicle Code Section 23152(a) (Under  
11 Influence of Alcohol/Drug in Vehicle), a misdemeanor. The  
12 underlying facts of this crime are substantially related under  
13 Title 10, Chapter 6, Section 2910, California Code of  
14 Regulations, to the qualifications, functions or duties of a  
15 real estate licensee.

16 8.

17 On or about March 24, 2005, in the Superior Court of  
18 California, County of Orange, in case no. 05NM02170, Respondent  
19 was convicted of violating California Vehicle Code Section  
20 14601.5(a) (Driving with a Suspended License), a misdemeanor.  
21 The underlying facts of this crime involve are substantially  
22 related under Title 10, Chapter 6, Section 2910, California Code  
23 of Regulations, to the qualifications, functions or duties of a  
24 real estate licensee.

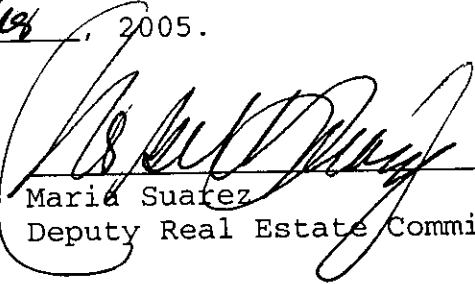
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1 WHEREFORE, Complainant prays that the above entitled  
2 matter be set for hearing and, upon proof of the charges  
3 contained herein, that the Commissioner refuse to authorize the  
4 issuance of, and deny the issuance of, a real estate salesperson  
5 license to Respondent, LEO GARCIA, and for such other and  
6 further relief as may be proper under other provisions of law.

7 Dated at Los Angeles, California

8 this 10th day of November, 2005.

9  
10   
11 Maria Suarez  
12 Deputy Real Estate Commissioner

13 Cc: LEO GARCIA  
14 Maria Suarez  
15 Sacto.  
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