

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

RUSSELL LEE RIGSBY,

Respondent.

Case No. H-33516 LA

OAH No. L2007010188

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on May 17, 2007.

Alvaro Mejia, Staff Counsel, represented Robin Trujillo (Complainant), a Deputy Real Estate Commissioner in the Department of Real Estate (Department), State of California.

Russell Lee Rigsby (Respondent) represented himself.

Oral and documentary evidence was received, and the matter argued.

It was discovered that the copy of Respondent's 2004 license application produced at the hearing was missing the page on which Respondent disclosed his criminal convictions. (See State Exhibit 11.) Respondent requested the Department to provide a complete copy of the application and Complainant's attorney agreed to do so. It also was agreed the record would remain open following the hearing to allow the Department time to supply a complete document and to allow Respondent to make any response he deemed appropriate.

On May 29, 2007, Complainant's counsel provided a complete copy of the application. It has been marked at State's Exhibit 12 and admitted in evidence.

No responsive has been received from Respondent.

The case was submitted for decision on June 13, 2007.

FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in his/her official capacity.

2. 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 Business and Professions Code). Respondent applied for the license in August 2004. In that application, Respondent disclosed nine criminal convictions. Following an investigation, the Department issued Respondent an unrestricted real estate salesperson license on January 12, 2005. No formal administrative proceeding was initiated at that time and no complaints have been filed against Respondent's license. With the exception of Respondent's October 2005 criminal conviction, the Department at the time Respondent's license was originally issued considered all of the convictions set forth below.

3. Respondent's criminal convictions appear to stem from two circumstances. The first circumstance concerns Respondent's failure, some years ago, to support his 14 year old daughter by a prior relationship. Respondent's driver's license was suspended as a result of his non-support. While his license was suspended, Respondent continued to drive an automobile and was more than twice convicted for driving without a valid driver's license. (See Factual Findings Paragraphs 14 through 17 below.) Respondent is current in those support payments and regularly visits with his daughter. Respondent now has an unrestricted license.

4. The second circumstance giving rise to Respondent's criminal problems concern his relationship with his wife. Until recently, their relationship was very acrimonious. Respondent objected to her relationships or supposed relationships with other men. Their arguments and confrontations over this led to Respondent's criminal convictions described in Paragraphs 8 through 13.

5. Respondent and his wife have two children ages 7 and 3 years.

6. Respondent and his wife filed for divorce in November 2005. Respondent obtained custody of the children in 2006 and cares for them alone. Respondent's ability to work is restricted by his responsibilities for his children and limited baby-sitting assistance.

7. Respondent's relationship with his wife has improved since their separation. Respondent recognizes that they probably should never have married. Having acknowledged this, Respondent appears to be accepting their situation with more maturity.

Respondent's Criminal Convictions

8. On October 26, 2005, in the California Superior Court, County of Riverside, Respondent, upon a plea of guilty, was convicted of violating Penal Code section 243, subdivision (e) (1), battery against spouse, a misdemeanor. The court suspended the proceedings and placed Respondent on probation for a period of 36 months, upon certain terms and conditions including, serving ten days in the county jail (on weekends), paying fines and fees totaling \$836.00, avoiding negative contact with his wife, and completing a 52 week domestic violence/batterers program. Respondent has completed the domestic violence program and is making monthly payments on the fines and fees. He remains on probation.

9. Respondent's 2005 conviction arose out of an argument Respondent had with his wife over the telephone number of an asserted boy friend of the wife that appeared on her cell phone. Respondent was alleged to have pushed her. They mutually bumped their respective automobiles into one another in their attempts to get away from the property via a narrow driveway.

Matters in Aggravation

10. On August 3, 2004, in the California Superior Court, County of Riverside, Respondent, upon a plea of guilty, was convicted of violating Penal Code section 591, damaging a telephone/power line, a misdemeanor. The court suspended the proceedings and placed Respondent on probation for 36 months, upon certain terms and conditions including, paying fines and fees and completing anger management counseling. Respondent completed the anger management counseling and is making monthly payments on the fines and fees. His probation ends in August 2007.

11. Respondent's 2004 criminal conviction resulted from his tearing a telephone wire out of the wall in an argument with his wife over her involvement with another man who was with her.

12. On December 8, 2003, in the California Superior Court, County of Riverside, Respondent, upon a plea of guilty, was convicted of violating Penal Code section 602, subdivision (1), trespass/refusal to leave land, a misdemeanor. The court suspended the proceedings and placed Respondent on probation for a period of 36 months, upon certain terms and conditions including serving two days in the county jail and paying fines and assessments in the amount of \$526 and not having negative contact with his wife or another man.

13. Respondent's 2003 criminal conviction resulted from Respondent's confrontation of his wife in the company of another man.

14. On March 15, 2000, in the California Superior Court, County of Orange, Respondent, upon a plea of guilty, was convicted of violating Vehicle Code section

14601.1, subdivision (a), driving on a suspended/revoked license, a misdemeanor. Respondent was also found to have two prior convictions for the same offense. The court sentenced Respondent to serve thirty days in the county jail.

15. Respondent's 2000, 1998 and 1997 criminal convictions for driving without a valid driver license resulted from his failure to provide financial support of a daughter and the consequent revocation of his driver license. Respondent continued to drive while his license was suspended.

16. On January 28, 1998, in the California Superior Court, County of Riverside, Respondent, upon a plea of guilty, was convicted of violating Vehicle Code sections 14601.1, driving while driving privilege was suspended or revoked, and 16201, subdivision (a), failure to establish financial responsibility as driver/owner of a motor vehicle, both misdemeanors. The court placed Respondent on summary probation for a period of 36 months, upon certain terms and conditions including, serving five days in the county jail and paying fines and fees assessed. On October 10, 2001, the court convicted Respondent of violating Penal Code section 1320, subdivision (a), failure to appear on release on own recognizance, a misdemeanor. The court sentenced Respondent to serve two days in the county jail.

17. On July 17, 1997, in the California Superior Court, County of Riverside, Respondent, on a plea of guilty, was convicted of violating Vehicle Code sections 23152, subdivision (a), driving under the influence of alcohol, and 14601.1, driving while license suspended, both misdemeanors. The Court placed Respondent on summary probation for a period of 36 months, upon certain terms and conditions, including paying a fine of \$2,013.00, completing a First Offender DUI program, and restricting his driving privilege.

18. Respondent indicated that his 1997 driving under the influence criminal conviction was the result of his drinking too much while celebrating.

Respondent's Background

19. For the past two years, Respondent has been employed by a realty company. He handles residential, commercial and vacant land transactions. Respondent works between 25 and 30 hours per week. The rest of his time is spent caring for his children. There have been no complaints filed against his real estate salesperson license.

20. Respondent's supervising broker testified in Respondent's behalf. The broker indicated that Respondent was a very good young salesman. Respondent had done everything requested of him honestly and fairly. The broker had had no problems with Respondent. No complaints had been filed against Respondent's handling of real estate transactions.

21. Respondent's broker is aware of Respondent's criminal convictions. The convictions have not affected Respondent's handling of real estate transactions. The broker is willing to continue to employ and supervise Respondent in the event Respondent was to receive a restricted license. The broker also made it clear that he had supervised two other real estate salespersons on restricted licenses in the past. He closely monitored their performance. The broker indicated to those persons that if they did not measure up he would immediately terminate the non-performing person. The broker reported that in one previous situation he had terminated a person on a restricted license who did not perform. The broker indicated that he would hold Respondent to a straight and narrow course of action in the event the broker was to supervise Respondent on a restricted license.

22. Respondent is a high school graduate and has taken some additional college courses. Due to his dependent responsibilities, Respondent cannot afford to complete his college education. He wants to take care of his family and feels that his only way of being able to maximize his income is through a career in real estate.

23. Respondent indicated that he believed that the anger management course he completed was helpful. He said he learned to think before acting, and how to react in different scenarios and to find a safe place to hide out in order to avoid confrontations.

24. Respondent appears to have gained maturity in handling his situation and has made progress in assuming responsibility for his actions. This will require time to accomplish, but his desire to succeed is great. Respondent's progress has been significant. There appears to be an opportunity for him to succeed at this time in that his custody of his two children has put substantial pressure on him to do so.

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code section 10100 et seq. and Government Code sections 11500 through 11528.

2. Respondent's 2005 criminal conviction of battery against a spouse involved moral turpitude and is substantially related to the qualifications, functions or duties of a real estate licensee as further described in the California Code of Regulations, title 10, section 2910, subdivision (8), in that it involved doing an unlawful act with the threat of doing substantial injury to another.

3. With the exception of Respondent's 2005 criminal conviction, all of Respondent's other criminal convictions were disclosed and evaluated as part of the prior administrative process in which Respondent's real estate salesperson license was issued. It is well established that once an administrative agency has made a final quasi-judicial determination about a matter in controversy, the agency loses jurisdiction over the matter and cannot thereafter reconsider it. 2 CalJur3d, Administrative Law, pg. 378; see *People*

v. *Sims* (1982) 32 Cal.3d 468. Consequently, while Respondent's other criminal convictions may be considered in aggravation, they cannot be an independent basis for disciplinary action at this time.

4. Cause exists, by virtue of Business and Professions Code sections 490 and/or 10177, subdivision (b), to revoke or suspend Respondent's license and license rights from the Department, due to his 2005 criminal conviction.

5. The Department's Criteria of Rehabilitation, set forth in California Code of Regulations, title 10, section 2912, provides factors to be considered in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated.

This case presents a unique situation. All of Respondent's criminal convictions with the exception of his 2005 conviction were considered by the Department at the time it issued his real estate salesperson license. Despite their existence, the Department issued Respondent an unrestricted license.

According to his supervising broker, Respondent has done well as a young real estate salesperson. The Department has received no complaints from the public regarding Respondent's real estate activities. Thus, notwithstanding a series of criminal convictions resulting from Respondent's domestic situations, the public has not been adversely affected by Respondent's salesperson activities.

In addition, Respondent's supervising broker is aware of Respondent's past and has made it clear to Respondent that no deviations from what is expected will be tolerated. Finally, the likelihood of Respondent having additional criminal problems appears to be greatly reduced by Respondent's separation from his wife, the transfer of custody of his two younger children to Respondent, and Respondent's acceptance that he and his wife were not well suited for each other and probably should never have married.

Clearly, there has been a change in Respondent's activities and attitude. His domestic situation is stabilizing. Respondent is concentrating on his work and the rearing of his younger children. This leaves little time for anything else.

While Respondent's situation does not literally meet the Department's criteria for demonstrating rehabilitation, his actions do demonstrate progress in the direction of rehabilitation contemplated by the Department's criteria. Under these circumstances, placing Respondent on a restricted license, will provide the Department the ability to monitor Respondent's activities to insure protection of the public while at the same time permitting Respondent to continue as a real estate salesperson under the direction of his supervising broker.

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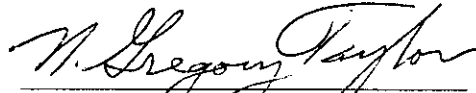
ORDER

All licenses and licensing rights of Respondent Russell Lee Rigsby, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code, if Respondent makes application therefore 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 Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The 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 nor 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. With any application for license under an employing broker, or any application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that, since the most recent issuance of an original or renewal real estate license, Respondent has 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.

DATED: June 15, 2007.



N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings


ALVARO MEJIA, Counsel (SBN 216956)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-6916

FILED

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DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H- 33516 LA
)	
RUSSELL LEE RIGSBY,)	<u>A C C U S A T I O N</u>
)	
Respondent.)	
)	

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against RUSSELL LEE RIGSBY, ("Respondent") alleges as follows:

1.

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

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

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(CRIMIINAL CONVICTIONS)

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3 On or about October 26, 2005, in the Superior Court of
4 California, County of Riverside, in case no. BAM025848,
5 Respondent was convicted of violating California Penal Code
6 Section 243(e)(1) (Battery Against a Spouse, Cohabitant, Parent
7 of Defendant's Child), a misdemeanor. This crime involves moral
8 turpitude, which bears a substantial relationship under Section
9 2910, Title 10, Chapter 6, California Code of Regulations to the
10 qualifications, functions or duties of a real estate licensee.

11 4.

12 On or about August 3, 2004, in the Superior Court of
13 California, County of Riverside, in case no. BAM020446,
14 Respondent was convicted of violating California Penal Code
15 Section 591 (Damage Telephone/Power Line), a misdemeanor. This
16 crime involves moral turpitude, which bears a substantial
17 relationship under Section 2910, Title 10, Chapter 6, California
18 Code of Regulations to the qualifications, functions or duties
19 of a real estate licensee.
20

21 5.

22 On or about December 8, 2003, in the Superior Court of
23 California, County of Riverside, in case no. BAM020208,
24 Respondent was convicted of violating California Penal Code
25 Section 602(1) (Trespass/Refuse to Leave Land), a misdemeanor.
26 This crime involves moral turpitude, which bears a substantial
27 relationship under Section 2910, Title 10, Chapter 6, California

1 Code of Regulations to the qualifications, functions or duties
2 of a real estate licensee.

3 6.

4 In aggravation of the above, on or about March 15,
5 2000, in the Superior Court of California, County of Orange, in
6 case no. 00WM01944, Respondent was convicted of violating
7 California Vehicle Code Section 14601.1(a) (Driving while
8 License Suspended or Revoked), a misdemeanor.

9 7.

10 In aggravation of the above, on or about January 28,
11 1998, in the Superior Court of California, County of Riverside,
12 in case no. BAM002885, Respondent was convicted of violating
13 California Vehicle Code Section 14601.1(a) (Driving while
14 License Suspended or Revoked), a misdemeanor. On or about
15 October 10, 2001, in the Superior Court of California, County of
16 Riverside, in case no. BAM002885, Respondent was convicted of
17 violating California Penal Code Section 1320(a) (Fail to Appear
18 on Release Own Recognizance), a misdemeanor.

19 8.

20
21 In aggravation of the above, on or about July 17,
22 1997, in the Superior Court of California, County of Riverside,
23 in case no. INM072105, Respondent was convicted of violating
24 California Vehicle Code Section 23152(a) (Driving Under the
25 Influence), a misdemeanor, and violating California Vehicle Code
26 Section 14601.1 (Driving while License Suspended), a
27 misdemeanor.

1
2 The crimes of which Respondent was convicted, as
3 described in Paragraphs 3, 4, and 5, above, constitute cause
4 under Sections 490 and 10177(b) of the Code for the suspension
5 or revocation of the license and license rights of Respondent
6 under the Real Estate Law.

7 WHEREFORE, Complainant prays that a hearing be
8 conducted on the allegations of this Accusation and that upon
9 proof thereof, a decision be rendered imposing disciplinary
10 action against all the licenses and license rights of
11 Respondent, RUSSELL LEE RIGSBY, under the Real Estate Law (Part
12 1 of Division 4 of the Business and Professions Code) and for
13 such other and further relief as may be proper under other
14 applicable provisions of law.

15 Dated at Los Angeles, California 12/7/06

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18 _____
19 Robin Trujillo
20 Deputy Real Estate Commissioner

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25 cc: RUSSELL LEE RIGSBY
26 Glenn Allen Stull
27 Robin Trujillo
Sacto.
KS