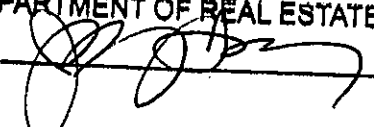


**FILED**

SEP 24 2007

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

\* \* \* \* \*

In the Matter of the Accusation of )  
 )  
 )  
 OLEGARIO CIELO AGUILAR, )  
 )  
 )  
 Respondent. )  
\_\_\_\_\_ )

No. H-33744 LA  
L-2007040721

DECISION

The Proposed Decision dated August 17, 2007, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on October 15, 2007.

IT IS SO ORDERED September 21, 2007

JEFF DAVI  
Real Estate Commissioner

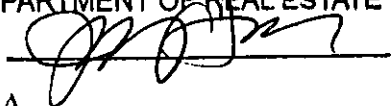
  
\_\_\_\_\_

BY: John R. Liberator  
Chief Deputy Commissioner

**FILED**

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

SEP 20 2007

DEPARTMENT OF REAL ESTATE  
BY: 

In the Matter of the Accusation of:

Case No. H-33744 LA

OLEGARIO CIELO AGUILAR,

OAH Case No. L2007040721

Respondent.

**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on June 8, 2007, in Los Angeles, California.

Cheryl D. Keily, Counsel, represented complainant Janice Waddell.

Frank M. Buda, Attorney at Law, represented respondent.

Complainant seeks to discipline respondent's real estate salesperson license because respondent suffered a criminal conviction. Respondent presented evidence of mitigation and rehabilitation in support of continued licensure.

Oral and documentary evidence was received at the hearing. The record was left open for the submission of written closing argument. Complainant filed her Closing Argument on July 6, 2007, and her Reply Brief on July 18, 2007, which documents have been marked for identification as Exhibits 5 and 6, respectively. Respondent filed his Closing Argument on July 10, 2007, which has been marked for identification as Exhibit F.

**FACTUAL FINDINGS**

1. Complainant filed the Accusation in her official capacity as a Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California.
2. Respondent was licensed as a real estate salesperson from 1987 until January 9, 2001. On January 10, 2001, respondent obtained real estate broker license number 1231976. The license, which has not been previously disciplined, expires January 9, 2009, unless renewed.

3. On November 9, 2006, in the Superior Court of California, Central Justice Center, County of Orange, in case number 06CM03925, respondent was convicted, following a jury trial, of violating Penal Code sections 273.5, subdivision (a) (domestic battery with corporal injury), a misdemeanor, and Penal Code section 148, subdivision (a)(1) (resist and obstruct a police officer). On the same day, the court suspended imposition of sentence and placed respondent on informal probation for three years on terms and conditions that included service of 45 days in county jail, with credit for one day already served, completion of a domestic batterer's treatment program, completion of eight hours of community service, and payment of \$340 in fines and fees.

4. The circumstances surrounding the conviction are as follows. On April 21, 2006, at approximately 8:00 p.m., respondent, three or four friends, and his fiancée, Rosa Buenrostro (Buenrostro), were socializing at the house owned by respondent and his wife, Soledad Aguilar (Aguilar).<sup>1</sup> The house was temporarily vacant while undergoing remodeling, and respondent did not expect Aguilar to be present. Aguilar did come to the house and a physical altercation ensued with Buenrostro, who was pregnant with the couple's second child. Respondent intervened to separate the two women and removed Aguilar from the room. Aguilar protested and hit respondent with her keys and hands. Respondent denied hitting Aguilar, and denied physically touching her, except to attempt to restrain her to keep her from hitting Buenrostro or himself. Another witness to the incident, Lazaro Penaloza (Penaloza), corroborated respondent's account, and further stated that he stepped in between respondent and Aguilar to keep her from hitting him; Aguilar left the house after Penaloza's intervention. Police officers who responded to Aguilar's subsequent call for assistance observed a black and blue swollen left eye and a slightly swollen upper left lip on the woman; however, this report is insufficient to establish that respondent inflicted these injuries because the police did not witness the incident and Buenrostro admitted she hit Aguilar in the face in self-defense.<sup>2</sup>

Aguilar reported the matter to the police, who went to the house at approximately 11:00 p.m. In their report, the officers state that respondent refused to step outside of the house to talk to them and that he resisted efforts to handcuff him. Respondent denied resisting arrest, and testified the two officers were overly aggressive and assaulted him.

---

<sup>1</sup> Respondent and Aguilar separated in 2001, a break-up triggered by the relationship with Buenrostro. In May 2002, respondent and Aguilar went to Mexico, where they were married, to obtain a divorce; however, once in Mexico, Aguilar changed her mind and the divorce did not take place.

<sup>2</sup> Aguilar did not testify at the hearing. Her hearsay statements to the police, to the extent that they contradict respondent's testimony, are insufficient to sustain a finding contrary to respondent's testimony. Respondent presented good demeanor and his testimony was generally credible.

5. Respondent regrets his involvement in the incident, and, if faced with the same situation, would call the police at the first sign of conflict. Respondent had never been involved in any prior physical altercation with Aguilar or with anyone else.

6. Respondent is 48 years old and has six children, all of whom he supports. He owns his business, Aguilar Realty, and employs four real estate salespersons. He focuses primarily on residential sales. He is not aware of any consumer complaints involving his real estate activities. He has remained current on his continuing education obligations.

7. Respondent, through his business, started and supports a charity that provides toys for impoverished children.

8. Respondent submitted ten letters from family, friends and associates, all attesting to his good character.

9. Respondent also presented the testimony of two witnesses, one of whom, Penaloza, also wrote a letter. Penaloza, a computer consultant who has engaged in business with respondent over the past six years, described respondent as a truthful, honest, and non-violent person. Buenrostro, who has been in a relationship with respondent for six years, testified that respondent is a good person, and a good father; he has never hit her or the children.

### LEGAL CONCLUSIONS

1. The crime of domestic battery involving corporal injury in violation of Penal Code section 273.5, subdivision (a), involves moral turpitude on its face. (*People v. Rodriguez* (1992), 5 Cal.App.4th 1398.)

2. Conviction of violating of Penal Code section 273.5, subdivision (a), is substantially related to the qualifications, duties and functions of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), because, on its face, the crime involves “[d]oing [an] unlawful act with . . . the intent or threat of doing substantial injury to the person . . . of another.”

Penal Code section 273.5, subdivision (a), provides: “Any person who willfully inflicts upon his or her spouse . . . corporal injury resulting in traumatic condition, is guilty of a felony . . .” Penal Code section 273.5, subdivision (c), defines “traumatic condition” as a “Condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.”

Conviction of the crime establishes that the injury was intended. As the court stated in *People v. Rodriguez*, supra, at 5 Cal App.4th 1398, 1402: "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 specially vulnerable. . . ."

In a conviction for violation of Penal Code section 273.5, the victim must also have suffered injury that resulted in "traumatic condition," which is "substantial" within the meaning of California Code of Regulations, title 10, section 2910, subdivision (a)(8).

3. Cause exists pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), to discipline respondent's license because he was convicted of a crime involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate licensee, by reason of factual finding numbers 3 and 4, and legal conclusion numbers 1 and 2.

4. The Department failed to establish that the conviction for violation of Penal Code section 148, on its face or in the existing circumstances, involves the readiness to do evil found in crimes of moral turpitude. Nor has the Department established that the crime is substantially related to the practice of real estate pursuant to any of the criteria set forth in California Code of Regulations, title 10, section 2910.

5. Respondent has satisfied some of the applicable criteria promulgated by the Department to demonstrate rehabilitation, which are set forth in California Code of Regulations, title 10, section 2912. Thus, he has paid all applicable fines (subd. (g)). Respondent continues to discharge his parental and financial responsibility to his children (subd. (j)). Respondent is engaged in significant and conscientious involvement in the community to provide social benefits through his founding and continuing sponsorship of a charity that provides toys to poor children (subd. (l)). Respondent credibly testified that he has learned from the circumstances that led to his conviction (subd. (m)). In addition, respondent is complying with all terms and conditions of probation. Testimony and letters of others familiar with respondent attest to his good character and professionalism. Respondent has not been the subject of any consumer complaint or prior Department action in connection with his activities as a real estate licensee.

On the other hand, less than two years have passed since the date of conviction (subd. (a)), which has not been expunged (subd. (c)), and respondent is still on probation (subd. (e)). Although he has remained current with his continuing education requirements, respondent presented no evidence of completion of other education for self-improvement (subd. (k)).

Respondent presented mitigating circumstances surrounding the conviction. Thus, the situation involved an unexpected, volatile encounter between his estranged wife and his fiancée, and he sought to prevent escalating violence. The mitigating circumstances surrounding the incident, respondent's lack of history of violence, and respondent's recognition that he should avoid similar situations, make recurrence of similar incidents unlikely. This unlikelihood of recurrence, the personal nature of the incident, and respondent's unblemished record in his professional endeavors, suggest that conduct similar to that which led to the conviction will not occur in connection with real estate transactions.

Therefore, on balance, the order that follows is sufficient, and necessary, for the protection of the public.

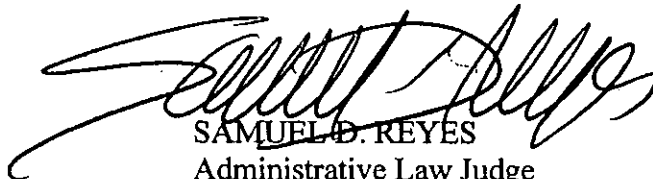
### ORDER

All licenses and licensing rights of respondent Olegario Cielo Aguilar under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department 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. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate

Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: 8/24/07

  
SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings

*Handwritten initials*

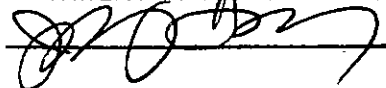
CHERYL D. KEILY, Counsel (SBN 94008)  
Department of Real Estate  
320 West 4th Street, Suite 350  
Los Angeles, California 90013-1105

Telephone: (213) 576-6982  
(Direct) (213) 576-5770

**FILED**

FEB 21 2007

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	No. H- 33744 LA
OLEGARIO CIELO AGUILAR, )	<u>A C C U S A T I O N</u>
Respondent. )	

The Complainant, Janice Waddell, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against OLEGARIO CIELO AGUILAR, aka Olegario Aguilar, ("Respondent") alleges as follows:

1.

The Complainant, Janice Waddell, 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



1 California Business and Professions Code ("Code") as a real  
2 estate broker.

3 3.

4 (CRIMINAL CONVICTIONS)

5 On or about November 9, 2006, in the Superior Court  
6 for the State of California, County of Orange, in Case No.  
7 06CM03925, Respondent was convicted of violating California  
8 Penal Code section 273.5(a) (Domestic Battery with Corporal  
9 Injury), a misdemeanor, and section 148(a)(1) (Resist and  
10 Obstruct Officer), a misdemeanor. The underlying facts of these  
11 crimes involve moral turpitude, which bear a substantial  
12 relationship under Section 2910, Title 10, Chapter 6, California  
13 Code of Regulations to the qualifications, functions or duties  
14 of a real estate licensee.

15 4.

16 The crimes of which Respondent was convicted, as  
17 described in Paragraph 3, above, constitute cause under Sections  
18 490 and 10177(b) of the Code for the suspension or revocation of  
19 the license and license rights of Respondent under the Real  
20 Estate Law.  
21

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1  
2 WHEREFORE, Complainant prays that a hearing be  
3 conducted on the allegations of this Accusation and that upon  
4 proof thereof, a decision be rendered imposing disciplinary  
5 action against all the licenses and license rights of  
6 Respondent, OLEGARIO CIELO AGUILAR, under the Real Estate Law  
7 (Part 1 of Division 4 of the Business and Professions Code) and  
8 for such other and further relief as may be proper under other  
9 applicable provisions of law.

10 Dated at Los Angeles, California

11 this 14 day of February, 2007.

12  
13  
14  
15  
16   
17 \_\_\_\_\_  
18 Janice Waddell  
19 Deputy Real Estate Commissioner  
20  
21  
22  
23  
24

25 cc: OLEGARIO CIELO AGUILAR  
26 Janice Waddell  
27 Sacto.