Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789

FILED

MAY 20 2009

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MICHAEL GARCIA, Respondent.	NO. H-4897 SAC

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: Respondent MICHAEL GARCIA (herein "Respondent"):

On July 8, 2008, a restricted real estate salesperson license was issued by the Department of Real Estate to Respondent on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Decision of May 28, 2008 in Case Number H-4897 SAC. This Decision granted the right to the issuance of a restricted real estate salesperson license subject to the provisions of Section 10156.7 of the Business and Professions Code (hereinafter "the Code") and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of the Code.

On April 22, 2009, in Case No. H-5197 SAC, an Accusation by a Deputy Real Estate Commissioner of the State of California was filed alleging cause under Sections 10130, 10085, 10146, 10145 of the Code and Sections 2970, 2972, 2832, 2831, 2831.1 and 2831.2 of the Commissioner's Regulation (Title 10 of the California Code of Regulation) in conjunction with

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Section 10177(d) of the Code for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

NOW, THEREFORE, IT IS ORDERED under authority of Section 10156.7 of the Code that any restricted real estate salesperson license heretofore issued to Respondent, and the exercise of any privileges thereunder, is hereby suspended pending final determination made after the hearing on the aforesaid Accusation.

IT IS FURTHER ORDERED that all license certificates and identification cards issued by the Department of Real Estate which are in the possession of Respondent be immediately surrendered by personal delivery or by mailing in the enclosed self-addressed envelope to:

DEPARTMENT OF REAL ESTATE
ATTN: Flag Section
Post Office Box 187000
Sacramento, CA 95818-7000

This order shall be effective immediately.

DATED: 5/15/09

JEFF DAVI
Real Estate Commissioner

FILED

MAY - 7 2008

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MICHAEL GARCIA, Respondent.	NO. H-4897 SAC OAH NO. N2008010410

DECISION

The Proposed Decision dated March 22, 2008, 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, but also grants the right to a restricted real estate salesperson license to respondent.

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 MAY 28 2008.

IT IS SO ORDERED 5-7-08.

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:	Case No. H-4897 SAC
MICHAEL GARCIA,	OAH No. 2008010410
Respondent.	

PROPOSED DECISION

This matter was heard before Administrative Law Judge Michael Jacobs, California Office of Administrative Hearings, on March 5, 2008, in Sacramento, California.

Jeanine K. Clasen, Counsel, Department of Real Estate, represented complainant Charles W. Koenig, Deputy Real Estate Commissioner.

Geoffrey A. Sutliff, Attorney at Law, appeared on behalf of Michael Garcia, who was also present.

The parties presented evidence and submitted the matter for decision on March 5, 2008.

FACTUAL FINDINGS

1. Respondent presently has license rights as a salesperson under the Real Estate Law (Bus. & Prof. Code, div. 4, pt. 1). The Department of Real Estate (Department) issued a salesperson license to respondent (No. 01259334) in May 1999. Respondent's current license will expire on August 26, 2011, unless renewed.

2. On December 7, 2007, complainant Charles W. Koenig filed the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation asserts that respondent's misdemeanor convictions in Placer County Superior Court in June 2005 and May 2007 constitute cause to suspend or revoke

respondent's salesperson license under the provisions of Business and Professions Code sections 10177, subdivision (b), and 490.[1]

3. Respondent timely filed a Notice of Defense, requesting a hearing and the opportunity to present a defense to the allegations in the Accusation, including matters in mitigation or rehabilitation. The matter was set for an evidentiary hearing before an administrative law judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

Respondent's June 28, 2005 misdemeanor convictions

4. On June 28, 2005, respondent pleaded nolo contendere in Placer County Superior Court to three misdemeanor charges in Case No. 62-51627: (1) Driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)); (2) driving a motor vehicle when respondent's driving privileges were suspended (Veh. Code, § 14601.5, subd. (a)); and (3) willfully resisting, delaying, or obstructing a peace officer in the discharge of duty (Pen. Code, § 148, subd. (a)). The court suspended a 120-day jail term on condition respondent participate in a three-month first offender alcohol education program, attend six months of semiweekly self-help sessions, pay a base fine in the amount of $450 plus penalty assessments, and serve a three-year probation period. In partial satisfaction of the court's sentence, respondent paid the fines and assessments, completed a 30-day residential alcohol education program at New Dawn Recovery Center, and participated in Alcoholics Anonymous meetings.

5. Respondent's June 28, 2005 misdemeanor convictions arose from his arrest on April 26, 2005, in Roseville, California, while he was still on probation from his June 28, 2005 convictions. Shortly after 1:00 a.m. on April 26, 2005, the arresting officer, who was in uniform and driving a marked patrol car, observed respondent fail to stop his car at a stop sign, turn into the officer's traffic lane — nearly colliding with the officer's car — and drive through an intersection against a red light. The officer activated the patrol car's emergency lights and began to pursue respondent's car. Respondent attempted to flee from the officer by accelerating rapidly and turning onto a side street, where he drove onto the shoulder and turned off the car lights. The officer stopped near respondent's car and, after a backup officer arrived, ordered respondent from his car. When the officer asked respondent for his name respondent verbally identified himself with a false name and an incorrect birth date. The officer discovered respondent's identity when he found respondent's driver's license in his car. Respondent failed field sobriety tests and his breath tests showed a blood alcohol content of .20 and .18 percent. When arrested that morning, respondent was driving with a suspended license. The Department of Motor Vehicles had suspended respondent's license

[1] In relevant part, Business and Professions Code section 490 together with the version of Business and Professions Code section 10177, subdivision (b), in effect when the Department filed the Accusation, authorize the Real Estate Commissioner to suspend or revoke a regulated license where the licensee has been convicted of a misdemeanor involving moral turpitude and the offense is substantially related to a Department of Real Estate licensee's qualifications, functions, or duties. (*Petropoulos v. Dept. of Real Estate* (2006) 142 Cal.App.4th 554, 565.)

after he failed to submit to or complete a chemical test following a previous detention for suspicion of driving under the influence of alcohol.

6. Respondent answered questions about his April 26, 2005 arrest fully and candidly, although he did not recall many details of the event, including giving the officer a false name, because of his intoxicated state when he was arrested. Respondent stated he was at a low point in his life during that period. He and his wife had marital problems, which ultimately led to their divorcing, and he had a falling out with his mortgage business partners. Respondent said his personal problems contributed to his engaging in heavy episodic alcohol consumption and that he often drank to intoxication.

Respondent's May 31, 2007 misdemeanor convictions

7. On May 31, 2007, respondent pleaded nolo contendere in Placer County Superior Court to two misdemeanor charges in Case No. 62-67641: (1) Falsely identifying himself to a peace officer to evade the process of the court or to evade proper identification by the investigating officer (Pen. Code, § 148.9, subd. (a)); and (2) driving a motor vehicle when the privilege to drive is suspended for a prior driving under the influence conviction (Veh. Code, § 14601.2, subd. (a)). At his plea and sentencing hearing, respondent admitted to the court he had violated the court's probation order issued on June 28, 2005, in Case No. 62-51627, detailed in Finding 4, above. At the hearing, the court reinstated respondent's probation in Case No. 62-51627 for a three-year term. On the two misdemeanor convictions, the court sentenced respondent to 30 days in jail and imposed a fine plus penalty assessments of $1,817.50. The court further ordered that respondent refrain from driving a motor vehicle without a valid license and insurance.

Respondent paid the fine and assessments and served an abbreviated jail term, gaining an early release because of jail overcrowding. His three-year probation term runs until August 31, 2010.

8. Respondent's May 31, 2007, misdemeanor convictions arose from a traffic enforcement stop in Roseville, California, on January 15, 2007. A police officer stopped respondent's car when the officer's laser speed detector indicated respondent was driving in excess of the speed limit. Respondent told the investigating officer he had forgotten his driver's license at work. He falsely identified himself to the officer as Richard Garcia and gave the officer a false birth date. The officer confronted respondent about his true identity after the police dispatcher informed the officer the Department of Motor Vehicles had no record of a license issued to a person with the name and birth date respondent provided. Respondent insisted to the officer he had properly identified himself and that he had a valid driver's license. As the officer began to walk toward his patrol car to conduct a further record check, respondent admitted to the officer he had falsely identified himself and gave the officer his true name and birth date. Respondent told the officer his driver's license had been suspended and that he did not want to get into trouble for driving illegally.

Evidence of Respondent's rehabilitation

9. In a proceeding to determine whether to suspend or revoke a real estate license, Business and Professions Code section 482, subdivision (b), requires consideration of the licensee's rehabilitation. "The more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be." (*In re Gossage* (2000) 23 Cal.4th 1080, 1097.) The Department's rehabilitation evaluation criteria are contained in California Code of Regulations, title 10, section 2912, which provides:

> The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.
>
> (a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)
>
> (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.
>
> (c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.
>
> (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
>
> (e) Successful completion or early discharge from probation or parole.
>
> (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

10. Respondent's most recent misdemeanor convictions occurred on May 31, 2007, less than one year ago. Respondent presently remains on court-ordered probation but has otherwise fulfilled the court's sentencing order. He offered no evidence regarding an attempt to petition the court for early release from probation or expungement of his convictions.

11. Respondent is a 38-year-old father of four young children. He shares custody of the children with their mother and makes timely child support payments. He has conscientiously worked to overcome the underlying personal problems that contributed to his alcohol abuse. Respondent has participated in Alcoholics Anonymous since his 2005 conviction for driving under the influence of alcohol and presently attends two meetings every month. He has not consumed alcohol since his arrest on April 26, 2005. Since divorcing his wife, respondent has maintained a stable and fulfilling home life.

12. Respondent honorably served three years on active duty in the United States Army and five years in the National Guard. Since his discharge from the Army respondent has had a successful nine-year career in the real estate industry. He left the mortgage firm where problems had developed among the partners and in October 2007 he joined a real estate firm in Fair Oaks, California, where he sells residential property and manages loan production. Respondent has no record of prior disciplinary action against his real estate salesperson license.

13. Respondent's community activities include participation in his church and organization of free public seminars conducted by legal and real estate experts on home foreclosure issues and other real estate topics.

14. Respondent introduced no evidence regarding enrollment in or completion of formal educational classes for economic self-improvement.

15. Through his testimony, respondent presented substantial and convincing evidence he has undergone a sincere and positive change in attitude since his convictions regarding his obligations to conform to societal rules.

LEGAL CONCLUSIONS

1. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

2. The Department established by clear and convincing evidence cause for discipline of respondent's real estate salesperson license and all licensing rights, pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), by reason of respondent's criminal convictions.

Two of respondent's convictions involve moral turpitude and have a substantial relationship to the qualifications, functions, or duties of a Department of Real Estate licensee

3. Although the concept of "moral turpitude" as a statutory disciplinary standard defies precise definition, the courts have consistently found that a crime necessarily involves moral turpitude if the conviction would in every case evidence bad moral character. (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) Crimes that reveal bad moral character include those involving fraudulent intent and intentional dishonesty for personal gain. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 400.) In license disciplinary matters, the facts and circumstances surrounding commission of a crime may also reveal that the conviction involved moral turpitude. (*In re Cohen* (1974) 11 Cal.3d 416, 421.)

4. Respondent's single conviction of driving under the influence of alcohol (Pen. Code, § 23152, subd. (a)), as set forth in Factual Finding 4, does not involve moral turpitude. (*In re Carr* (1988) 46 Cal. 3d 1089.)

5. No case has been found that addresses whether a conviction for driving on a suspended license involves moral turpitude. It is concluded that respondent's conviction of driving when his driver's license had been suspended (Veh. Code, § 14601.5, subd. (a)), as set forth in Factual Finding 4, does not involve moral turpitude.

6. Respondent's conviction of willfully resisting, obstructing or delaying a peace officer (Pen. Code, § 148, subd, (a)), as set forth in Factual Finding 4, involves moral turpitude. The facts and circumstances of respondent's conviction involved his attempt to flee from a pursuing peace officer while driving under the influence of alcohol, in willful disregard for the safety of persons or property. In *People v. Dewey* (1996) 42 Cal.App.4th 216, the court, in discussing a conviction comprising similar facts, observed that such conduct "creates the obvious potential of great bodily harm to pedestrians, other drivers, and pursuing officers" (*Id.* at p. 222) and that fleeing from a peace officer under those circumstances constitutes a crime of moral turpitude.

Respondent's conviction of resisting, obstructing, or delaying a peace officer is substantially related to the qualifications, functions or duties of a Department of Real Estate licensee, within the meaning of Business and Professions Code section 490, because it involves conduct demonstrating a pattern of repeated and willful disregard of law, as set forth in Factual Findings 4, 5, 7, and 8. (Cal. Code Regs., tit. 10, § 2910, subd. (a) (10).)

7. Respondent's conviction of falsely identifying himself to a peace officer to evade the process of the court or to evade proper identification by the investigating officer (Pen. Code, § 148.9, subd, (a)), as set forth in Factual Finding 7, establishes moral turpitude because the offense involves deceitful conduct for personal gain. "[C]onvictions of crimes involving fraudulent intent and intentional dishonesty for personal gain establish moral turpitude as a matter of law." (*Harrington v. Department of Real Estate, supra*, 214 Cal.App.3d at pages 400-401.)

Respondent's conviction of falsely identifying himself to a peace officer to evade the process of the court or to evade proper identification by the investigating officer bears a substantial relationship to the qualifications, functions and duties of a Department of Real Estate licensee because it involves conduct demonstrating a pattern of repeated and willful disregard of law, as set forth in Factual Findings 4, 5, 7, and 8 (Cal. Code Regs., tit. 10, § 2910, subd. (a) (10)) and because the crime involves deceit to achieve an end. (Cal. Code Regs., § 2910, subd. (a) (4).) Engaging in deceitful conduct to avoid responsibility for unlawful acts reveals a deficiency in the character traits required of licensed real estate salespersons. In *Harrington*, the court stated, "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 appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson. [Citation.] 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." (*Harrington v. Department of Real Estate, supra*, 214 Cal.App.3d at p. 402.)

8. Respondent's conviction of driving a motor vehicle when his driving privilege had been suspended for a previous conviction of driving under the influence of alcohol (Veh. Code, § 14601.2, subd. (a)), as set forth in Factual Finding 7 does not involve moral turpitude.

Cause exists to issue respondent a restricted real estate salesperson license

9. Respondent established that he is partially rehabilitated, when evaluated by the Department's criteria. Although his most recent conviction occurred less than one year ago, respondent sincerely regrets his criminal behavior and continues to make significant positive changes in his personal life and professional situation. He has not abused alcohol since his April 2005 arrest for driving under the influence and he continues to participate regularly in Alcoholics Anonymous meetings.

10. Respondent met his burden to show a positive transformation in his attitude regarding his obligations to conform to societal norms and produced sufficient evidence of his good character to warrant the issuance of a restricted real estate salesperson license. Respondent is willing to accept a restricted license.

11. In weighing the facts regarding respondent's convictions, the potential risk respondent's conduct poses to the public and to clients, and evidence of respondent's rehabilitation, it is concluded it would not be contrary to the public interest to allow respondent to hold a restricted salesperson license under the terms of the following order.

ORDER

All licenses and licensing rights of respondent Michael Garcia 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 therefor 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 that 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 submit with any application for license under an employing broker, or any application for transfer to a new employing broker, 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 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: March 22, 2008

Michael Jacobs

MICHAEL JACOBS
Administrative Law Judge
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE
By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MICHAEL GARCIA, Respondent.	No. H-4897 SAC ACCUSATION

Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MICHAEL GARCIA, also known as "Michael Garcia, Jr.", "Michael Garcia, Sr." and "Mark Brown" (herein "Respondent"), is informed and alleges as follows:

I

Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in his official capacity.

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II

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

III

On or about June 28, 2005, in the Superior Court of the State of California, County of Placer (Case Number 62-51627), Respondent was convicted of the crime of Driving Under The Influence Of Drugs/Alcohol in violation of Vehicle Code Section 23152(a), the crime of Driving With A Suspended/Revoked License in violation of Vehicle Code Section 14601.5(a), and the crime of Resisting/Obstructing/Delaying A Peace Officer in violation of Penal Code Section 148(a), each a misdemeanor and a crime of moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations ("the Regulations") to the qualifications, functions, or duties of a real estate licensee.

IV

On or about May 31, 2007, in the Superior Court of the State of California, County of Placer (Case Number 62-67641), Respondent was convicted of the crime of Giving False Information To A Peace Officer in violation of Penal Code Section 148.9(a), and the crime of Driving While The Privilege Is Suspended Based On A Prior Conviction in violation of Vehicle Code Section 14601.2(a), each a misdemeanor and a crime of moral turpitude which bears a substantial relationship under Section

2910 of the Regulations to the qualifications, functions, or duties of a real estate licensee.

V

The facts alleged above constitute cause under Sections 490 and 10177(b) of the Code for suspension or revocation of Respondent's license under the Real Estate Law.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a Decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Code, and for such other and further relief as may be proper under provisions of law.

CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 6th day of December, 2007.