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SEP 4 2003
DEPARTMENT OF REAL ESTATE
By

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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| In the Matter of the Accusation of<br><br>CHRISTIAN S. GIRARDIN,<br><br>Respondent. | No. H-29897 LA<br><br>L-2003030313 |

DECISION

The Proposed Decision dated July 30, 2003 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 conviction of a crime and knowingly making a false statement of fact required to be revealed in an application for license.

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 September 24, 2003.

IT IS SO ORDERED September 3, 2003

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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| In the Matter of the Accusation Against:<br><br>CHRISTIAN S. GIRARDIN,<br><br>Respondent. | Case No. H-29897 LA<br><br>OAH No. L2003030313 |

## PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California heard this matter in Los Angeles, California on July 15, 2003.

Mary E. Work, Counsel, represented the Department of Real Estate.

James E. Dunger, Attorney, represented Christian S. Girardin, who appeared.

The matter was submitted on July 15, 2003.

## FACTUAL FINDINGS

1. Mary Suarez made the allegations contained in the Accusation in her official capacity only as a Deputy Real Estate Commissioner, Department of Real Estate (hereafter "the Department"), State of California. The Accusation was filed on January 22, 2003. Christian Sanchez Girardin timely filed a Notice of Defense to the Accusation. The matter was set for an evidentiary hearing. The burden of proof is clear and convincing evidence.

2. The Department issued Mr. Girardin a real estate salesperson's license on September 8, 1989. The license has been continuously renewed and is in full force and effect. The license expires June 12, 2006. There is no history of previous disciplinary action by the Department against Mr. Girardin.

3. Mr. Girardin, then using the name Christian Eugenio Sanchez, was convicted on February 4, 2000 in the Superior Court, County of Los Angeles, Van Nuys Division, of the crimes of violation of Penal Code section 191.5, gross vehicular manslaughter, a felony, Vehicle Code section 23152(a), driving under the influence of alcohol, a misdemeanor and Vehicle Code section 23152(b), driving a vehicle with a blood alcohol level of more than

.08% by volume, a misdemeanor. Mr. Girardin was sentenced to a term of 4 years in State prison. Mr. Girardin served 26 months of the sentence. He remains on parole into 2004. Mr. Girardin was also ordered to pay fines and make restitution.

4. Mr. Girardin's driver's license was revoked, and could not be reinstated for three years and until Mr. Girardin demonstrated financial responsibility to the Department of Motor Vehicles ("DMV"). DMV issued Mr. Girardin a written Order of Revocation of the driver's license issued to Mr. Girardin, under the name of Christian Eugenio Sanchez, number U1150134, on February 18, 2000. The Order of Revocation was mailed to Mr. Girardin's address of record. Mr. Girardin was in custody at the time, and did not receive the Order. He became aware of the Order when he discussed the matter of driving with his parole officer upon his release from prison in 2002.

5. The circumstances that led to Mr. Girardin's conviction occurred on February 25, 1995. Mr. Girardin drove his vehicle under the influence of alcohol on city streets in North Hollywood at a high rate of speed. He collided with six fixed objects as he sped down the right sidewalk, including a street light, two trees, and steps from a commercial building. His fiancée passenger was killed in the crash as the result of sustaining multiple injuries including fatal closed head trauma. Mr. Girardin suffered serious injuries, but survived.

6. The facts and circumstances reveal the criminal offenses are substantially related to the qualifications, duties and functions of a real estate licensee. Even though the criminal conduct has nothing directly to do with the practice of real estate, nevertheless Mr. Girardin engaged in conduct that reflected reckless disregard for the life and safety of his passenger, and for other motorists, pedestrians and property in the area. He was very intoxicated and traveling at a high rate of speed. Mr. Girardin's conduct was exceptionally irresponsible. The conduct and later admissions reveal a serious and uncontrolled problem with alcohol. A real estate licensee is expected to behave responsibly toward others and their property, and to behave in such a fashion that the safety of persons and property are not jeopardized irresponsibly. Mr. Girardin's conduct leading to his conviction reflected his disregard for these required traits of a licensee.

7. Mr. Girardin made bail after being charged with felony drunk driving and felony gross vehicular manslaughter. He fled the country and went to South America. He remained at large for more than four years. He was arrested in Newport Beach, some time after returning to the U.S. He was working as a mortgage loan broker using his real estate license.

8. Mr. Girardin was convicted following a court trial on March 27, 2002 in the Superior Court, County of Orange, State of California of the crime of a violation of Vehicle Code section 14610(a), possession of a false driver's license, a misdemeanor. Mr. Girardin was sentenced to serve 30 days in the County jail, with credits for 30 days already served as a result of a parole hold placed on him when it was discovered he had two driver's licenses. Mr. Girardin's parole was not affected.

9. The facts leading to the conviction for possession of a false driver's license were that Mr. Girardin had two different California driver's licenses in his possession in 2002. One was issued in 1987, number U1150134, in the name of Christian Eugenio Sanchez. That license was valid when Mr. Girardin caused the alcohol related fatal crash in 1995 and was revoked as set forth above. In 1999, when Mr. Girardin had returned to the U.S. but was still a fugitive, he obtained license number C5446261 in the name of Christian Sanchez Girardin. The second license was discovered when Mr. Girardin presented it to his parole officer, in the context of asking her about driving. The parole officer discovered that Mr. Girardin's other driver's license had been revoked.

10. Mr. Girardin testified that he asked his parole officer about driving when he was released. She had him obtain a copy of his DMV records, which showed the 1999 driver's license valid. Mr. Girardin did not obtain or show his parole officer the records for his other, revoked license. The parole officer saw the record of a valid license and told him he could drive if he has insurance. She later ran the records herself and found the second driver's license records. Mr. Girardin contends that his parole officer would never have known about the second driver's license if he had not raised the issue with her. He testified he was trying hard to make certain everything he did was legal. Mr. Girardin believed that both his driver's licenses were joined by DMV. But he did agree that it was dishonest for him to have and use the second driver's license when the first one was revoked.

11. The circumstances of Mr. Girardin's conviction for possession of a false driver's license reveal that the conviction is substantially related to the qualifications, functions and duties of a real estate salesperson licensee. Mr. Girardin admitted that his use of his second driver's license was dishonest, but would not acknowledge that his obtaining and possession of the second driver's license was dishonest. It stretches credulity to assert that Mr. Girardin did not know his previous driver's license would be revoked or suspended after his felony conviction. Mr. Girardin obtained the second license while a fugitive from those charges. He took advantage of the fact that he had two sets of documents in different names that he could use to obtain the second license. A real estate licensee is a fiduciary and is expected to behave honestly and ethically toward others. Mr. Girardin's behavior leading to his conviction did not meet these standards.

12. Mr. Girardin filed a Salesperson Renewal Application with the Department on June 14, 2002. Question 3 of the renewal application states, within the past four year period, have you 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 felony or misdemeanor offense". Mr. Girardin answered "Yes" to Question 3. Mr. Girardin completed Question 15, which requires detailed disclosure of all convictions. The preamble to Question 15 advises, "'Convicted' as used in Question 3 includes a verdict of guilty by judge or jury...All convictions must be disclosed..." Mr. Girardin disclosed the vehicular manslaughter conviction, but he failed to disclose the possession of a false driver's license conviction.

13. Mr. Girardin's failure to disclose the false driver's license conviction was a knowing, material misrepresentation of fact on his renewal application. Despite the fact that Mr. Girardin continues to dispute the conviction, he was tried by a judge and found guilty, and sentenced to an additional 30 days in jail. He did not forget the conviction. He only disclosed the felony vehicular manslaughter conviction because he thought that was the serious offense and he thought the Department was only interested in the serious offenses.

14. There is little evidence of rehabilitation in the record. Mr. Girardin works as a loan officer for Rohan Realtors in Santa Ana, California. He attends Alcoholic Anonymous meetings as part of his parole. He advised the Department that his manslaughter and DUI convictions reflect a problem with alcohol, but there was little evidence from Mr. Girardin himself about what efforts he might be making to recognize a problem with alcohol and participate in rehabilitation. Mr. Girardin remains on parole and his driver's license is suspended. There was little other evidence of his life and activities since he was released from prison, saving his dishonest conduct with his second driver's license.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 498 provides, "A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact."

2. Business and Professions Code section 10177 provides, in pertinent part, "The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information..."

3. Mr. Girardin made a material misrepresentation on his application for renewal of his real estate salesperson license, as set forth in Factual Finding 13. Mr. Girardin failed to disclose his 2002 conviction for possession of a false driver's license. Mr. Girardin's omission was intentional, as he explained that he thought the Department was only interested in disclosure of the more serious felony conviction. Mr. Girardin's omission constituted an attempt to obtain his renewal by misrepresentation. Mr. Girardin thus violated Sections 498 and 10177(a) above, and therefore legal cause exists to suspend or revoke Mr. Girardin's license.

4. Business and Professions Code section 490 provides, "A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

5. Mr. Girardin has been convicted of a felony offense of gross vehicular manslaughter, misdemeanor driving under the influence and misdemeanor possession of a false driver's license. The felony and the misdemeanor possession of the false driver's license convictions are substantially related to the qualifications, functions and duties of a real estate licensee, as set forth in Factual Findings 6 and 11. Therefore, legal cause exists by reason of Sections 490 and 10177(b) above to suspend or revoke Mr. Girardin's real estate salesperson license.

6. Mr. Girardin presented little evidence of rehabilitation, as analyzed by the Department's criteria for rehabilitation set forth in Title 10, California Code of Regulations section 2912. Two years have not passed since the most recent conviction, and Mr. Girardin remains on parole for the felony conviction. The felony conviction for a 1995 offense was delayed until 2000 because Mr. Girardin absconded on bail and fled the country. He engaged in dishonest conduct by obtaining and using a second driver's license. He has not been crime free until late 2002. Restitution was not made for property damaged. Significant fines were assessed, and there is no evidence those fines and penalties have been paid. The convictions have not been expunged. There is no evidence of consistent participation in a rehabilitation program. There was some hearsay that Mr. Girardin was ordered to participate in Alcoholics Anonymous as part of his parole release, and it may be assumed that he is in compliance with his parole, since he is out of custody. There was no evidence that Mr. Girardin participates in any other rehabilitation program. There was no evidence that Mr. Girardin abstains from drinking and has abstained for two years or more. There is no indication of stable personal, family or business relationships, no evidence of his abilities and character as a licensee and no evidence of attendance at school other than the fact that he appears current on his continuing education, and no evidence of community involvement. Mr. Girardin's attitude toward his false driver's license conviction was still defensive and

self-justifying; while at the same time admitting his conduct was dishonest. Mr. Girardin expressed what appeared to be genuine remorse over the loss of his fiancée. The probation officer's report indicates Mr. Girardin made efforts to make amends for his conduct to his fiancée's family in Venezuela.

7. On balance, the factors in aggravation, including the fact that Mr. Girardin remains on parole, that he suffered a second conviction when just recently released on parole, and failing to disclose the second conviction, collectively outweigh facts in mitigation and what little evidence of rehabilitation was presented. Mr. Girardin's real estate license must be revoked.

ORDER

The real estate salesperson license issued by the Department of Real Estate to Christian S. Girardin, and all appurtenant licensing rights, are REVOKED, separately and severally for each of the causes set forth in the Legal Conclusions.

DATED: July 30, 2003

Stephen J. Smith

STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

SACTO

# BEFORE THE DEPARTMENT OF REAL ESTATE

# STATE OF CALIFORNIA

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| In the Matter of the Accusation of<br><br>**CHRISTIAN S. GIRARDIN,**<br><br>*Respondent.* | Case No. **H-29897 LA**<br><br>OAH No. L-2003030313 |

FILED
MAR 25 2003
DEPARTMENT OF REAL ESTATE
By

## NOTICE OF HEARING ON ACCUSATION

***To the above-named Respondent(s):***

***You are hereby notified*** that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on **TUESDAY, JULY 15, 2003,** at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: March 25, 2003

By
MARY E. WORK, Counsel

cc: Christian S. Girardin
Flor Roman
James E. Dunger, Esq.
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RE 501 (Rev. 8/97)

SACTO

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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| In the Matter of the Accusation of<br>CHRISTIAN S. GIRARDIN,<br>Respondent. | No. H- 29897 LA<br>ACCUSATION |

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against CHRISTIAN S. GIRARDIN (hereinafter "Respondent"), is informed and alleges as follows:

I

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

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 "Code") as a real estate salesperson.

III

Respondent was issued a renewed real estate salesperson license effective June 13, 2002, following Respondent's salesperson renewal application filed on or about June 19, 2002.

FIRST CAUSE OF ACTION
(FAILURE TO REVEAL CRIMINAL CONVICTION ON APPLICATION)

IV

In response to Question No. 3 of Respondent's application described in Paragraph III above, to wit: "Within the past four year period, have you been convicted of any violation of law?" Respondent answered "Yes," and described one conviction for vehicular manslaughter occurring on February 18, 1999 but failed to reveal the conviction described below in Paragraph V.

V

On or about March 27, 2002, in the Superior Court of California, County of Orange, Central Justice Center, in Case No. SA02CM00724, Respondent was convicted of violating Section 14610(a)(1) of the Vehicle Code (Possess a False Driver's License), a misdemeanor crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations (hereinafter "Regulations") to the qualifications, functions or duties of a real estate licensee.

VI

Respondent's failure to reveal the conviction set forth above, in his application for the renewal of his license as a

real estate salesperson, constitutes the procurement of a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application and constitutes cause under Sections 498 and 10177(a) of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

SECOND CAUSE OF ACTION
(CRIMINAL CONVICTIONS)

VII

In addition to the conviction set forth above in Paragraph V, on or about February 4, 2000, in the Superior Court of California, County of Los Angeles, Northwest Judicial Branch, in Case No. LA020156, Respondent, upon his plea of nolo contendere was convicted of violating Section 191.5(a) of the Penal Code (Gross Vehicular Manslaughter), a felony crime; Section 23152(a) of the Vehicle Code (Under the Influence of Alcohol/Drugs in Vehicle), a misdemeanor; and Section 23152(b) of the Vehicle Code (.08% or more BAC), crimes that are substantially related under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

VIII

The facts set forth above in Paragraphs V and VII, above, constitute cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of all licenses and license rights of Respondent 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 CHRISTIAN S. GIRARDIN under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other provisions of law.

MARIA SUAREZ
Deputy Real Estate Commissioner

Dated at Los Angeles, California,
this 21st day of January, 2003.

cc: Christian S. Girardin
Flor Roman
Maria Suarez
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