

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

FILED

OCT 14 2009

DEPARTMENT OF REAL ESTATE

By K. Max

In the Matter of the Accusation of

LEONARD DAENELE SARGENT,

Respondent.

NO. H-10633 SF

OAH NO. 2009040554

DECISION

The Proposed Decision dated September 11, 2009, 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.

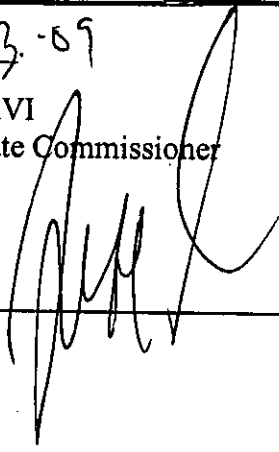
The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

--- This Decision shall become effective at 12 o'clock noon on NOV 04 2009

IT IS SO ORDERED

10-13-09

JEFF DAVI  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

LEONARD DAENELE SARGENT,

Respondent.

Case No. H-10633 SF

OAH No. 2009040554

**PROPOSED DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 16, 2009, and August 24, 2009.

Real Estate Counsel Richard K. Uno represented complainant E.J. Haberer II, Deputy Real Estate Commissioner, State of California.

Respondent Leonard Daenele Sargent appeared on his own behalf on June 16, 2009. On August 24, 2009, he was represented by William H. Coke, Attorney at Law, and he was present himself.

The matter was submitted on August 24, 2009.

**FACTUAL FINDINGS**

1. Respondent Leonard Daenele Sargent is licensed and/or has licensing rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate salesperson.

2. Complainant E.J. Haberer II, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, filed an accusation against respondent on March 26, 2009. The accusation alleges that respondent has been convicted of crimes that are substantially related to the qualifications, functions or duties of a real estate licensee.

*Convictions*

3. On December 12, 2006, respondent was convicted on his plea of nolo contendere of a violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or higher), a misdemeanor. Respondent admitted to a prior conviction in 2003 of a violation of Vehicle Code section 23103, subdivision (a),

pursuant to Vehicle Code section 23103.5 (reckless driving as substitute for charge of driving under the influence, "wet reckless"). (See Finding 6, below.) Imposition of sentence was suspended and respondent was placed on court probation for three years on the conditions that he serve 12 days in jail, with credit for time served and a recommendation to the weekend work program; pay fines and fees in the approximate amount of \$1,500; and complete a three-month multiple offender drinking driver course. Respondent has satisfied his obligation to the weekend work program, paid the required fines and fees, and completed the drinking driver course.

This conviction followed a traffic stop on October 21, 2006.

4. On December 31, 2008, respondent was convicted on his pleas of guilty of another violation of Vehicle Code section 23152, subdivision (b), and a violation of Vehicle Code section 14601.2, subdivision (a) (driving while privilege is suspended due to prior DUI), both misdemeanors. Respondent admitted that he had a high blood alcohol level at the time of his offense (0.16 percent) and he admitted to his prior convictions of similar offenses in 2003 and 2006. Imposition of sentence was suspended and respondent was placed on court probation for three years on the conditions that he serve 200 days in jail, with credit for time served and a recommendation to the weekend work program, pay approximately \$2,000 in fines and fees, and enroll in a multiple offender drinking driver program. Respondent was assigned to the weekend work program, where he performed two days of service per week; he recently completed his service obligation. He is making monthly payments toward his fines and fees and he is current on his payments. At the time of hearing, respondent had not yet started the multiple offender program because he was waiting to complete the weekend work program first. He has identified two programs that are located near to him and he will enroll in October 2009.

This conviction followed a traffic stop on May 16, 2008, at about 1:45 a.m., at which time respondent was found to be under the influence of alcohol.

#### *Matters in aggravation*

5. On March 17, 1999, respondent was convicted on his plea of guilty of a violation of Vehicle Code section 23103, subdivision (a), pursuant to Vehicle Code section 23103.5 (wet reckless). Imposition of sentence was suspended and respondent was placed on court probation for two years and ordered to pay fines and fees of approximately \$850 and to complete a first offender drinking driver program.

This conviction followed a traffic stop on December 31, 1998.

6. On May 20, 2003, respondent was convicted on his plea of nolo contendere of another violation of Vehicle Code section 23103, subdivision (a), pursuant to Vehicle Code section 23103.5. Imposition of sentence was suspended and respondent was placed on court probation for three years on the conditions that he pay fines and fees of approximately \$500, and complete a first offender drinking driver program.

This conviction followed a traffic stop on March 22, 2003.

*Respondent's evidence*

7. Respondent is 34 years old. He is engaged to be married.

8. Until his last arrest in May 2008, respondent never sought treatment for alcohol abuse; he states that, despite the drinking driver programs he attended, he did not acknowledge that he had a problem with alcohol. Respondent sought treatment for the first time on August 1, 2008, when he chose to enter Vida Nueva, a residential alcohol treatment program. Respondent described the program at Vida Nueva as "very intense." He lived at Vida Nueva for five months. (The program is four months long, but respondent stayed an extra month to be sure that he was ready to live independently.) The program follows the principles of Alcoholics Anonymous. Residents attend 12-step meetings regularly, participate in one-on-one counseling, and work with an assigned "buddy." They work the 12 steps with a sponsor. After the first two weeks, residents are allowed to leave the facility to work, but they must check in by 6:00 p.m. and participate in a two-to-three hour program in the evening. Vida Nueva administers random drug and alcohol tests to its residents. All of respondent's tests were negative.

Respondent feels that the program at Vida Nueva was very helpful to him in understanding his alcoholism and giving him the tools to remain sober. He now acknowledges his alcoholism, he attends three to five AA meetings per week, and he is working the 12 steps of Alcoholics Anonymous with the help of his sponsor. Respondent is determined to maintain his sobriety. He has not consumed any alcohol since July 11, 2008.

9. Respondent is working as a real estate salesperson, as he did when he was residing at Vida Nueva. He does not drive clients to see properties because his driving privilege has been suspended. Clients pick him up and he accompanies them to the properties they are interested in; he pays for their mileage. When he holds an open house, respondent makes his own arrangements for transportation to the property.

10. Respondent attends church regularly.

### LEGAL CONCLUSIONS

1. Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), together provide that a real estate license may be suspended or revoked if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee. Section 2910 of title 10 of the California Code of Regulations sets forth criteria for determining whether a crime is "substantially related." Respondent's 2006 and 2008 convictions for violations of Vehicle Code section 23152, subdivision (b), are substantially related because the crimes involved the threat of substantial injury to others and driving under the influence of alcohol. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(8) and (a)(10).) Respondent's 2008 conviction for a violation of Vehicle Code

section 14601.2, subdivision (a), is substantially related because it involved driving without a license. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(7).) Each of these convictions constitutes cause, under Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), to suspend or revoke respondent's salesperson license.

2. Respondent has the burden of demonstrating that he is sufficiently rehabilitated from his convictions so that it would not be contrary to the public interest to allow him to continue to perform the duties of a real estate licensee. The department has adopted regulations to assist in the evaluation of a licensee's rehabilitation. (Cal. Code Regs., tit. 10, § 2912.)

Respondent has a history of alcohol-related offenses going back almost 10 years and he has not yet satisfied some of the department's criteria of rehabilitation: it has not yet been two years since his last conviction, he has not yet abstained from alcohol for two years, and he is still on probation for his 2008 conviction. But, since his last arrest in May 2008, respondent has sought and obtained meaningful treatment for his alcohol abuse for the first time. In August 2008, he enrolled in and completed a five-month-long, comprehensive residential treatment program. Since then, respondent's attitude toward his alcohol abuse has changed. He has abstained from drinking alcohol since July 11, 2008. He is determined to maintain his sobriety and he is taking responsible steps to do so. He regularly attends Alcoholics Anonymous meetings and, with the help of his sponsor, he is working the program's 12 steps. Respondent has respected the suspension of his driving privilege and has made appropriate arrangements to continue to work as a salesperson without driving. It is noted that good behavior is expected when an individual is on probation, but it is apparent that respondent has accepted personal responsibility for his alcohol abuse without regard to the terms of his probation. Respondent's rehabilitation is by no means complete, but it has a solid foundation and it is promising. It would not be contrary to the public interest to allow respondent to hold a restricted license subject to conditions, one of which is that he must continue to abstain from the use of alcohol.

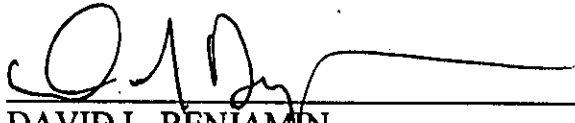
#### ORDER

All licenses and licensing rights of respondent Leonard Daenele Sargent 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 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 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 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 abstain completely from the consumption of alcohol and the use of any illegal drugs.
6. 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 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: September 11, 2009

  
\_\_\_\_\_  
DAVID L. BENJAMIN  
Administrative Law Judge  
Office of Administrative Hearings

1 RICHARD K. UNO, Counsel (SBN 98275)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007  
5 Telephone: (916) 227-2380  
6  
7

FILED

APR - 1 2009

DEPARTMENT OF REAL ESTATE

By H. Max

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 LEONARD DAENELE SARGENT, ) H-10633 SF  
13 Respondent. ) ACCUSATION  
14

15 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of  
16 the State of California, for cause of Accusation against LEONARD DAENELE SARGENT,  
17 (hereinafter "Respondent"), is informed and alleges as follows:

18 1

19 Complainant makes this Accusation against Respondent in his official capacity.

20 2

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

24 3

25 On or about December 12, 2006, in the Superior Court of the State of California,  
26 County of Santa Clara, Case No. CC 649106, Respondent was convicted of violating Section  
27 23152(b) of the California Vehicle Code (Driving Under the Influence of Alcohol or a Drug), a

1 misdemeanor and a crime involving moral turpitude which bears a substantial relationship under  
2 Section 2910, Title 10, California Code of Regulations (herein "Regulations"), to the  
3 qualifications, functions or duties of a real estate licensee.

4 4

5 On or about December 3, 2008, in the Superior Court of the State of California,  
6 County of Santa Clara, Case No. CC 808597, Respondent was convicted of violating Section  
7 23152(b) of the California Vehicle Code (Driving Under the Influence of Alcohol or a Drug),  
8 and Section 14601.2(a) of the California Vehicle Code (Driving with a Suspended License),  
9 both misdemeanors and crimes which bear a substantial relationship under Section 2910 of the  
10 Regulations, to the qualification, functions or duties of a real estate licensee.

11 MATTERS IN AGGRAVATION

12 5

13 On or about May 20, 2003, in the Superior Court of the State of California,  
14 County of Santa Clara, Case No. CC 311882, Respondent was convicted of violating Section  
15 23103 of the California Vehicle Code (Wet Reckless).

16 6

17 The facts alleged in Paragraph 3 and 4, above, constitute cause under Section  
18 10177(b) and Section 490 of the Code for suspension or revocation of Respondent's license  
19 under the Real Estate Law.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///



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

5  
6   
7 E. J. HABERER, II  
Deputy Real Estate Commissioner

8 Dated at Oakland, California,  
9 this 26<sup>th</sup> day of march, 2009.