

FILED
DEC 12 2007
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

By C. L.

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
TIBURCIO URIARTE,)
Respondent.)

No. H-33902 LA
L-2007080930

DECISION

The Proposed Decision dated November 20, 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.

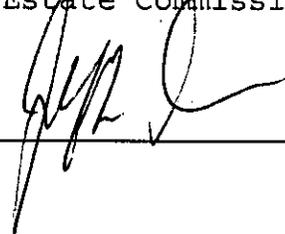
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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 January 2, 2008.

IT IS SO ORDERED 12-10-07

JEFF DAVI
Real Estate Commissioner



**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

**In the Matter of the Accusation of
TIBURCIO URIARTE,
Respondent.**

Case No. H-33902 LA

OAH No. L2007080930

PROPOSED DECISION

This matter came on regularly for hearing on October 26, 2007, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Janice Waddell (Complainant) was represented by Lissete Garcia, Staff Counsel.

Tiburcio Uriarte (Respondent) was present and represented himself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. Complainant made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.
2. Respondent was issued a license as a real estate salesperson by the Department of Real Estate (Department) on June 28, 1993. The license will expire on August 31, 2009, unless renewed.

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3. On December 20, 2005, in the Superior Court of California, County of Santa Barbara, in Case No. 1180568, Respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code sections 23103.5 (Reckless Driving With Alcohol Involved), and 20002, subdivision (a) (Hit-Run Driving). Both crimes were misdemeanors substantially related to the qualifications, functions and duties of a real estate salesperson, pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8). The violation of Vehicle Code section 20002, subdivision (a) was a crime inherently involving moral turpitude.

4. Respondent was placed on formal probation for a period of three years under various terms and conditions including restitution in an amount to be determined by the Probation Department, payment of fines and fees totaling \$895, and enrollment in and completion of a 12-hour "wet reckless" program.

5. Respondent's formal probation was converted to informal probation after he paid the restitution and fines. Respondent also paid \$1,000 in restitution to repair the automobile he damaged. He completed the 12-hour drunk driving program.

6. The facts and circumstances underlying the conviction are that, after consuming a number of alcoholic beverages in a restaurant, Respondent drove his vehicle and collided with a parked car. He fled the scene and hid from the police. The following day, he went to a local police precinct and reported that his vehicle had been stolen. When an officer questioned the truth of his report, Respondent admitted that his car had not been stolen, and that he had fled the scene of the accident the night before.

7. At the time of the accident, Respondent was going through an acrimonious divorce. His wife was making a number of accusations against him and was attempting to take his children from him. On the night of the accident, Respondent was drinking in response to the stress of his domestic situation. That stress also factored into his decision to leave the accident scene. Respondent admits that he was wrong to drink and drive and to have left the scene of the accident. He accepts responsibility for his criminal conduct and is remorseful for his wrongdoing.

8. Respondent does not habitually drink and drive. However, that particular day "just got the best of [him]." (Respondent's expression.) Respondent's divorce was finalized approximately three months ago. He no longer drinks because of stress involving his former wife, and he does not let that stress "absorb" him as it did before. Respondent is committed to avoiding a recurrence of the conduct that led to his convictions.

9. Respondent has a close and stable relationship with his three children. His oldest child attends UCLA. His younger two children are ages 11 and 12, respectively. Respondent presently has joint custody of his children.

10. Respondent volunteers at his children's school. He occasionally attends church and assists with church bar-be-ques and other events.

11. Respondent has worked as a real estate salesperson for Cornerstone Real Estate (Cornerstone) in Santa Maria, California since May 2007. He worked in another real estate agency for the co-owners of Cornerstone for over eight years before accepting his current employment. Respondent's employers are aware of his conviction but nonetheless consider him a valued employee because of a strong work ethic and diligence in serving his clients. Respondent does not drink alcoholic beverages while at work or during business lunches. He has never before been subject to discipline by the Department.

12. Respondent believes he learned a valuable lesson on the night of the accident, and he considers it a "wake up call." He is certain it will never happen again.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to discipline Respondent's real estate salesperson's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), for conviction of a crime involving moral turpitude and substantially related to the qualifications, functions and duties of the licensed activity, as set forth in Findings 3, 4, 5 and 6.

2. Respondent has satisfied some of the Department's applicable Criteria of Rehabilitation set forth at California Code of Regulations, title 10, section 2912. He has paid the court-ordered restitution [Criterion (b)]. He paid the court-ordered fines and fees [Criterion (g)]. He enjoys a stable family life and fulfills his familial responsibilities [Criterion (j)]. He is active in church and school activities [Criterion (l)]. He has changed his attitude from the time of the accident [Criterion (m)]. Although two years have not passed since the date of his conviction [Criterion (a)], that date will arrive in approximately one month.

3. Under other circumstances, the temporal recency of the conviction and the relatively few criteria of rehabilitation Respondent has satisfied would militate against his continued licensure. However, the fact that Respondent's crime was a single, isolated incident, committed in the throes of a highly emotional time in his life when he stood to lose both his marriage and his children, constitutes a strong mitigating factor. Given the circumstances that triggered his criminal conduct, the risk of recidivism is low. A restricted license, issued for an extensive period of time, should adequately protect the public safety, welfare and interest.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Tiburcio Uriarte, 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 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 five 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.

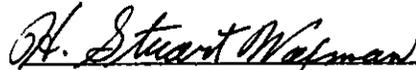
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5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken 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 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: November 20, 2007


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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6 (Direct) (213) 576-6914

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APR 17 2007
DEPARTMENT OF REAL ESTATE

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-33902 LA
12 TIBURCIO URIARTE,) A C C U S A T I O N
13 Respondent.)
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15 The Complainant, Janice Waddell, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against TIBURCIO URIARTE, aka Tiburcio Diaz Uriarte
18 ("Respondent"), is informed and alleges in her official capacity
19 as follows:

20 I

21 At all times herein mentioned, Respondent was and is
22 presently licensed by the Department of Real Estate of the State
23 of California ("Department") as a real estate salesperson under
24 the Real Estate Law, Part 1 of Division 4 of the California
25 Business and Professions Code ("Code").
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II

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2 Respondent, pursuant to the provisions of Code Section
3 10153.3, was originally licensed as a salesperson with the
4 Department on or about June 28, 1993.

5 III

6 On or about December 20, 2005, in the Superior Court
7 of California, County of Santa Barbara, Santa Maria Division, in
8 Case No. 1180568, as part of a plea bargain, Respondent pled
9 guilty to and was convicted of violating California Vehicle Code
10 Section 23103.5 (reckless driving with alcohol involved) and
11 Vehicle Code Section 20002(a) (hit-run driving), misdemeanors.
12 The underlying facts of said crimes involve moral turpitude and
13 bear a substantial relationship under Section 2910, Title 10,
14 Chapter 6, California Code of Regulations, to the
15 qualifications, functions or duties of a real estate licensee.
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17 IV

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

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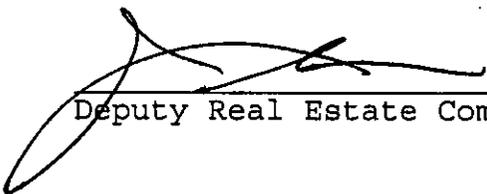
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and, that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondent,
5 TIBURCIO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

9 Dated at Los Angeles, California

10 this 16 day of April, 2007.

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14 Deputy Real Estate Commissioner
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24 cc: Tiburcio Uriarte
25 Clarence Grant Brickey
26 Sacto.
27 Janice Waddell