

BEFORE THE DEPARTMENT OF REAL ESTATE

By C. B.

STATE OF CALIFORNIA

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In the Matter of the Accusation of)	No. H-34892 LA
BRIAN ALVIN GOLDSWORTHY,)	L-2008061017
Respondent.)	

DECISION

The Proposed Decision dated September 17, 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.

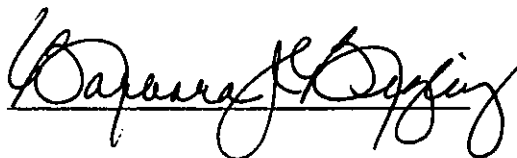
The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

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 November 10, 2008.

IT IS SO ORDERED 10/14/08

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

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

**In the Matter of the Accusation of
BRIAN ALVIN GOLDSWORTHY,
Respondent.**

Case No. H-34892 LA

OAH No. L2008061017

PROPOSED DECISION

This matter came on regularly for hearing on August 28, 2008, at Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Maria Suarez (Complainant) was represented by Lissete Garcia, Counsel, California Department of Real Estate.

Brian Alvin Goldsworthy (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. The Accusation was made by Maria Suarez, Complainant, who is a Deputy Real Estate Commissioner of the State of California, acting in her official capacity.
2. Respondent was issued a license as a real estate salesperson by the Department of Real Estate (Department) on May 8, 2004. The license will expire on May 7, 2012, unless renewed.

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3. On January 31, 2007, in the Superior Court of California, County of Santa Barbara, in Case No. 1215320, Respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 496, subdivision (a) (Receiving Stolen Property), a misdemeanor involving moral turpitude, and a crime substantially related to the qualifications, functions and duties of a real estate licensee.

4. Respondent was placed on unsupervised probation for a period of three years under various terms and conditions including payment of fines and assessments totaling \$145 and completion of 60 hours of community service.

5. The facts and circumstances underlying the conviction arose out of the celebration of Respondent's 26th birthday. Respondent and a group of friends from Arizona celebrated his birthday by spending the evening at a variety of restaurants and bars in which his friends purchased a large number of alcoholic beverages for him. The predictable result was that, by the end of the evening, Respondent was extremely intoxicated. The group left the evening's final bar at the time it was closing. As Respondent left the establishment, he was discovered carrying a woman's purse.

6. According to Respondent, the purse belonged to a female friend whom he had met at the same bar that night and who was, by then, a member of the group. As they left the bar, the friend told Respondent she had forgotten her purse inside. Respondent returned to the area where they had been seated, retrieved what he believed to be her purse and exited the bar. However, he had picked up the purse of a stranger instead of that of his friend. Two witness statements contained in the police report tend to belie Respondent's version of the events of that evening. However, those statements constitute inadmissible hearsay pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448 [65 Cal.Rptr.2d 860], and cannot be considered. Therefore, Respondent's testimony concerning the facts and circumstances is uncontroverted and of sufficient credibility to support a finding.

7. Respondent had never before had any adverse contact with the criminal justice system. His extreme intoxication, the subject incident and his subsequent conviction together constitute an anomalous, isolated incident for him.

8. Respondent performed his community service for the Surfrider Foundation, a non-profit organization dedicated to protecting beaches and oceans. He has continued to do volunteer work for the Surfrider Foundation since he completed his community service.

9. Respondent attends a church. He did not offer any details about the degree of his involvement with it.

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10. Respondent's closest relative is his mother with whom he shares a close relationship. Respondent's mother considers her son's reputation for honesty to be "absolutely superb." Respondent also holds the respect of the branch manager of the Coldwell Banker office in which he works. Much of Respondent's real estate work requires his presence in high-end residential properties. In that regard, he is trusted by co-workers and clients, he enjoys a good professional reputation, and he has never been the subject of a complaint from a client.

11. Respondent sees the individuals who were present on the night of his arrest only when he visits Arizona. He did not elaborate on the frequency of his visits to that state.

12. Respondent does not abuse alcohol. His arrest and conviction are a frequent reminder to him how easily he could lose control because of alcohol, and that reminder serves as a disincentive from over-imbibing.

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 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 failed to satisfy most of the Department's applicable criteria for rehabilitation set forth in California Code of Regulations, title 10, section 2912, largely because of the temporal recency of his conviction. Although his continued consumption of alcoholic beverages following an alcohol-related conviction is troubling, it is his arrest and conviction that serve as his motivation for moderation.

3. Respondent's conviction was an isolated and anomalous event in an otherwise law abiding life. His conviction followed an incident during which he was under the extreme effects of alcohol after an over-zealous night of birthday celebration. Given the negative effect Respondent's conviction has had on him, it is unlikely he will ever again celebrate his birthday, or any other day, in like fashion.

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4. In light of the above, the public should be adequately protected with the issuance of a properly-conditioned restricted real estate salesperson license. However, Respondent is still on criminal probation and is scheduled to remain so until January 2010. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant or, in this case, a licensee, has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Therefore, Respondent's real estate salesperson license must remain in restricted status for a sufficient period of time beyond his criminal probation to ensure his full rehabilitation.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Brian Alvin Goldsworthy, 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 four years have elapsed from the effective date of this Decision.

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4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.


5. 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.

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 17, 2008


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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FILED
April 30, 2008
DEPARTMENT OF REAL ESTATE

By

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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-34892 LA
12 BRIAN ALVIN GOLDSWORTHY,) A C C U S A T I O N
13 Respondent.)
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15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against BRIAN ALVIN GOLDSWORTHY ("Respondent"), is informed and
18 alleges in her official capacity as follows:

19 I

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

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1 II

2 Pursuant to the provisions of Code Section 10153.3,
3 Respondent was originally licensed as a salesperson with the
4 Department on or about May 8, 2004. Respondent's license shall
5 expire on May 7, 2008. Respondent has renewal rights under Code
6 Section 10201. The Department retains jurisdiction pursuant
7 Code Section 10103.

8 III

9 On or about January 31, 2007, in the Superior Court of
10 the State of California, County of Santa Barbara, Figueroa
11 Division, in Case No. 1215320, as part of a plea agreement,
12 Respondent pled no contest to and was convicted of violating one
13 count of Penal Code Section 496(a) (receiving stolen property,
14 to wit: a purse), a misdemeanor. Said crime involves moral
15 turpitude and bears a substantial relationship under Section
16 2910, Title 10, Chapter 6, California Code of Regulations, to
17 the qualifications, functions or duties of a real estate
18 licensee.

19 IV

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

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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/or license rights of Respondent, BRIAN ALVIN GOLDSWORTHY, 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 applicable provisions of law.

Dated at Los Angeles, California

this 23rd day of June, 2008.

Deputy Real Estate Commissioner

cc: Brian Alvin Goldsworthy
Coldwell Banker Residential
Sacto.
Maria Suarez