

FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

JUN -8 2009

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Accusation of)
SEAN GARRIE SEAGREN,)
Respondent.)

NO. H-35022 LA
OAH NO. 2008070704

DECISION

The Proposed Decision dated May 15, 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.

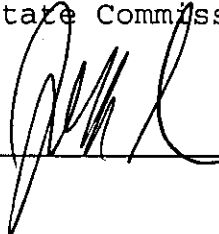
The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon

on JUN 29 2009.

IT IS SO ORDERED

JEFF DAVI
Real Estate Commissioner

6-3-09


BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

SEAN GARRIE SEAGREN,

Respondent.

Case No. H-35022 LA

OAH No. 2008070704

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 7, 2009, in San Diego, California.

Truly Sughrue, Counsel, represented complainant Joseph Aiu, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Stacie L. Patterson, Attorney at Law, represented respondent Sean Garrie Seagren, who was present throughout the administrative hearing.

The matter was submitted on May 7, 2009.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 10, 2008, complainant Maria Suarez, a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California, signed the accusation in her official capacity. The accusation sought to impose discipline against the real estate license held by Sean Garrie Seagren (Seagren or respondent) as a result of Seagren's 2005 battery conviction. The accusation and other required jurisdictional documents were served on Seagren, who timely filed a notice of defense.

Venue was transferred from Los Angeles to San Diego, and the matter was set for hearing in San Diego, California.

On March 10, 2009, complainant Joseph Aiu, a Deputy Real Estate Commissioner, signed the first amended accusation in his official capacity. The first amended accusation

sought to impose discipline against Seagren's real estate license held as a result of his 2005 battery conviction, his 2007 violation of a protective order conviction, and his 2009 driving under the influence conviction. All new charges were controverted by operation of law.

On May 7, 2009, the administrative record was opened. Jurisdictional documents were presented, official notice was taken, documentary evidence was produced, sworn testimony was received, closing arguments were given, the record was closed and the matter was submitted.

License History

2. On February 24, 2004, the Department of Real Estate issued salesperson's license no. S/01390615 to Sean Garrie Seagren.

There is no history of any discipline having been imposed against Seagren's real estate salesperson's license.

Seagren's Convictions

3. On June 14, 2005, Seagren was convicted on his plea of guilty of violating Penal Code section 245, subdivision (e)(1) (battery upon a person with whom he had a dating relationship), a misdemeanor, in the Superior Court of California, County of San Diego, in Case No. CN 192762. In connection with the change of plea form, Seagren admitted that he willfully and unlawfully used force on the person of another with whom he had a dating relationship.

Imposition of sentence was suspended and the court placed Seagren on three years summary probation. The court ordered Seagren to pay approximately \$500 in fines and fees, to attend two AA meetings per week for 12 months, to not use force or violence upon another, to stay away from Jessica Butler, and to obey all laws with the exception of minor traffic offenses.

4. On December 18, 2006, Seagren was convicted on his plea of guilty of violating Penal Code section 166, subdivision (c)(1) (violation of a protective order), a misdemeanor, in the Superior Court of California, County of San Diego, in Case No. CN 219971. In connection with the change of plea form, Seagren admitted that he willfully violated a no contact order that was issued in Case No. 192762 and unlawfully used force on the person of another with whom he had a dating relationship.

Imposition of sentence was suspended and the court placed Seagren on three years summary probation. The court ordered Seagren to pay approximately \$500 in fines and fees, to serve 60 days custody through the short term work furlough program, to stay away from Jessica Butler, and to obey all laws with the exception of minor traffic offenses.

5. On October 14, 2008, Seagren was convicted on his plea of guilty of violating Health and Safety Code section 11350, subdivision (a) (possession of a controlled substance), a misdemeanor, and Vehicle Code section 23152, subdivision (b) (operating a motor vehicle with an excessive blood alcohol level) with a prior driving under the influence conviction, a misdemeanor, in the Superior Court of California, County of San Diego, in Case No. CN 249712. In connection with the change of plea form, Seagren admitted that he knowingly possessed a usable quantity of cocaine and drove a vehicle with a blood alcohol level in excess of 0.08 percent when having a prior driving under the influence conviction within ten years.

Imposition of sentence was suspended and the court placed Seagren on five years formal probation. The court ordered Seagren to pay just over \$4,000 in fines and fees, to serve 240 days custody, which was stayed pending the successful completion of probation, to register as a drug offender, attend and complete an SB 38 multiple offender drinking driver program, and to obey all laws.

Circumstances of the Offenses

6. The 2005 Battery Conviction: Seagren was in an abusive, alcohol-driven relationship with an exotic dancer. According to the incident report, on February 26, 2005, sheriff's deputies responded to a call regarding possible domestic violence as a result of Jessica Butler seeking emergency medical attention at Scripps Encinitas Hospital. When Seagren was contacted by deputy sheriffs concerning his involvement, he admitted that he and Butler had an argument earlier that evening, he claimed that Butler was drunk and that Butler threatened to kill herself with a knife, and that he prevented her from injuring herself.

At the administrative hearing, Seagren testified that Butler attempted to assault him with a knife, that he was forced to defend himself, and that he may have struck Butler in the process of taking the knife away from her.¹

7. The 2006 Violation of a Protective Order Conviction: Seagren testified he was extremely upset about some of the lies Butler was telling about him, so he decided to go to her place of business, a strip club in Mira Mesa, on October 12, 2006, "just to see the look on her face." Seagren testified that he was uncertain that Butler would be there when he arrived, but sometime after he arrived, Butler showed up at the club. Butler saw Seagren, became upset, and Seagren immediately left the strip club. Evidently, Butler also called law enforcement. Seagren testified that he was present in court when the stay away order he

¹ *Arneson v. Fox* (1980) 28 Cal.3d 440 held that in an administrative disciplinary proceeding, an administrative agency may rely on a licensee's plea and the conviction based on that plea to establish a reasonable and substantial relationship to licensed activities. A licensee may introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation, but an inquiry into the circumstances surrounding the offense should not form the basis of impeaching a prior conviction. Regardless of the various motives which may have impelled the plea, the conviction based thereon stands as conclusive evidence of the licensee's guilt of the offense charged.

admitted he violated was issued, but said he was not really certain if he was violating that order on October 12 because of his uncertainty about Butler being at the strip club when he arrived and because he was in a public place where he thought he had the right to be.

8. The 2008 Possession of Cocaine and DUI Conviction: On August 15, 2008, Seagren spent the day at the racetrack in Del Mar. After the races were over, he drove home. On the way home, he stopped at a 7-11 convenience store where a patrol officer happened to be parked eating a burrito. Seagren ran the front wheels of his vehicle into the parking curb, after which the patrol officer motioned Seagren over to his patrol unit for a conversation. Seagren was under the combined influence of alcohol and cocaine at the time. One thing led to another, and Seagren was ultimately arrested for driving under the influence. In some fashion, Seagren was also found to be in possession of 13 grams of cocaine. According to Seagren, his blood alcohol level was 0.17 percent at the time of his arrest.

Seagren had a previous driving under the influence conviction arising out of an incident occurring on December 16, 2002, at San Diego State University. As a result of the conviction arising out of that incident, Seagren attended and completed a first offender driving under the influence program in September 2003.

Seagren's Background and History

9. Seagren was born in San Diego in September 1978. He grew up in La Jolla, graduating from La Jolla High in 1996. Seagren attended Sacramento State University for a year, and then transferred to San Diego State University, where he received a bachelor's degree in Finance and Business Administration in 2002.

Seagren became a licensed real estate salesperson in February 2004. Department of Real Estate records indicated that his employing broker is Joseph Wolf Garrie. In connection with his 2005 arrest, Seagren told the arresting officer that he was employed by Vacation Rentals, which may be the name of his broker's business.

Seagren is not involved in real estate sales, but provides real estate management services by renting and managing rental properties located along the coast from Oceanside to San Diego. He estimated that he has closed approximately 100 rental transactions since he became licensed, all without any customer complaints.

10. Following his most recent DUI arrest, but before his conviction, Seagren voluntarily enrolled in an in-patient substance abuse rehabilitation program known as Tender Loving Mercy located in Vista, California. Seagren completed the residential portion of the program, and then completed the aftercare program. Seagren provided a certificate of completion showing his completion of the Tender Loving Mercy program on April 8, 2009. In addition, Seagren provided a letter from Jacque Engel, a counseling group co-facilitator, which stated that Seagren had confronted his addiction problems, effected behavioral modifications, and had regained control of himself and was ready to re-enter the community

in a positive light. She reported that Seagren was in compliance with the Tender Loving Mercy program.

With regard to his recovery, Seagren testified that he was in the process of mental and emotional recovery. He claimed a sobriety date of October 12, 2008, stated that he attended several AA meetings a week until he broke his leg about a month ago, had a sponsor named Earl, and was in the process of working the 4th step of recovery. Seagren has a home group.

Seagren testified that he is now more focused on his goals than when he was drinking and using, that he is more clear and alert, that he is confronting his personal problems, and that he no longer associates with those people with whom he associated when he engaged in the misconduct giving rise to his convictions. He no longer uses drugs or consumes alcohol.

Seagren lives in Encinitas. He does support anyone other than himself.

11. Letters were provided by Seagren's mother and his broker.

Seagren's mother, a real estate broker, described how Seagren manages several properties the family owns. She observed that Seagren was trustworthy, and that he never let his personal problems interfere with his professional responsibilities. Seagren's mother observed great changes in her son following his rehabilitation program, including self-confidence and direction he did not previously possess.

Joe Garrie, Seagren's broker, described how Seagren developed professional relationships with several property owners, and that Garrie never received a complaint concerning Seagren's services. Garrie was aware of Seagren's alcohol and drug problems, and noted Seagren becoming more irritable in the office before he went into the rehabilitation program. Since his completion of that program, according to Garrie, Seagren underwent a major change and now has a much healthier attitude and lifestyle.

Evaluation

12. Less than a year has passed since Seagren's most recent conviction. Seagren's criminal history involved his abuse of substances, anger problems, a refusal to obey a court order, and two driving under the influence convictions within ten years. Seagren remains on formal probation. Seagren has maintained employment since his graduation from college. He has not demonstrated a significant and conscientious involvement in programs designed to benefit the public other than his recent participation in Alcoholics Anonymous. Seagren claims he has undergone a significant change in attitude from that which existed at the time of his most recent arrest, but he expressed no real remorse for his wrongdoing and expressed no concern for the victims of his crimes. He blamed his ex-girlfriend for his battery conviction, provided a disingenuous explanation in an effort to support his claim that he did not know he was violating a court order, and described himself simply as a victim of bad luck in connection with his recent DUI arrest. Seagren provided documentary evidence to

corroborate his testimony concerning his rehabilitation and his activities since his most recent conviction, but he provided no sworn testimony other than his own.

Given the nature and pattern of the underlying misconduct, the brief amount of time that Seagren has been clean and sober, the lack of independent testimony to support his rehabilitation, and the fact that he remains on formal probation, it cannot be concluded on this record that Seagren is fit to hold a real estate license, even on a restricted basis, or that any disciplinary action short of an outright revocation is warranted.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

1. The object of an administrative proceeding aimed at revoking a real estate license is to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. In an action seeking to impose discipline against the holder of a real estate license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

3. In a disciplinary proceeding, the burden of proof is upon the party asserting the affirmative. Guilt must be established to a reasonable certainty. Guilt cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or upon uncorroborated hearsay. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Applicable Statutes

4. Business and Professions Code section 490 provides in part:

“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”

5. Business and Professions Code section 10177 provides in part:

“The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following . . .

...

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, 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”

Substantial Relationship

6. Conviction alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

7. Licensing authorities do not enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications. Business and Professions Code section 481 requires each licensing agency to “develop criteria to aid it . . . to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.” In response to this directive, the Department adopted section 2910 of Title 10 of the California Code of Regulations, California Code of Regulations. (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 955-956.)

8. California Code of Regulations, title 10, section 2910 sets forth the Department’s substantial relationship criteria. Subdivision (a)(8) provides that any unlawful act involving the intent to do substantial injury to another is a substantially related offense; subdivision (a)(9) provides that the willful failure to comply with a court order is a substantially related offense; subdivision (a)(10) provides that conduct which demonstrates a pattern of repeated and willful disregard of law is a substantially related offense; and subdivision (a)(11) provides that two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs constitutes a substantially related offense

9. Each of respondent’s convictions is substantially related to the qualifications, functions, and duties of a real estate licensee under the department’s criteria.

Rehabilitation

10. The Department’s criteria of rehabilitation are set forth in California Code of Regulations, title 10, section 2912. The relevant factual matters related to these criteria are set forth in Factual Findings 10-12.

11. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.) Since persons under the direct supervision of judicial or correctional authorities must behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

Cause Exists to Impose Discipline

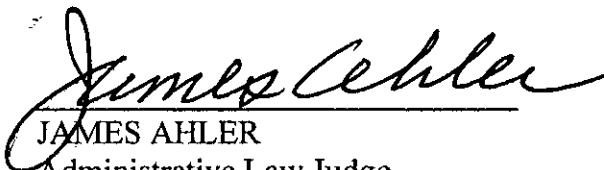
12. Cause exists to revoke Seagren's real estate salesperson's license under Business and Professions Code sections 490 and 10177, subdivision (b). The clear and convincing evidence established that Smith suffered three substantially related misdemeanor convictions since June 2005, the most recent in October 2008. He remains on formal probation for the most recent conviction. Seagren is to be commended for his voluntary entry into a substance abuse program and for remaining clean and sober for nearly a year. He is invited to file a petition for reinstatement if he continues his successful efforts to rehabilitate himself. However, Seagren's convictions are recent, he remains on formal probation, and the evidence presented in rehabilitation, while substantial, is very recent and did not establish his current fitness to hold a real estate salesperson's license.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

All licenses and licensing rights of respondent Sean Garrie Seagren under the Real Estate Law are revoked.

DATED: May 15, 2009.


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

FLAG

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
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7 Telephone: (916) 227-0781
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FILED

MAR 11 2009

DEPARTMENT OF REAL ESTATE

By H. Mar

10 BEFORE THE DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of

14 SEAN GARRIE SEAGREN,

15 Respondent.

No. H-35022 LA

FIRST AMENDED
ACCUSATION

16
17 The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the
18 State of California, for cause of Accusation against SEAN GARRIE SEAGREN (hereinafter
19 "Respondent"), is informed and alleges as follows:

20 1

21 The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the
22 State of California, makes this Accusation in his official capacity.

23 2

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

27 ///

1 3

2 On or about June 14, 2005, in the Superior Court, County of San Diego,
3 Respondent was convicted of a violation of Section 243(e)(1) of the California Penal Code
4 (Battery on Person in Dating Relationship), a misdemeanor involving moral turpitude and crime
5 which bears a substantial relationship under Section 2910, Title 10, California Code of
6 Regulations, to the qualifications, functions or duties of a real estate licensee.

7 4

8 On or about January 25, 2007, in the Superior Court, County of San Diego,
9 Respondent was convicted of a violation of Section 166(c)(1) of the California Penal Code
10 (Violation of Protective Order), a misdemeanor involving moral turpitude and crime which bears
11 a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the
12 qualifications, functions or duties of a real estate licensee.

13 5

14 On or about January 6, 2009, in the Superior Court, County of San Diego,
15 Respondent was convicted of a violation of Section 11350(a) of the California Health and Safety
16 Code (Possession of a Controlled Substance) and Section 23152(b) of the California Vehicle
17 Code (Driving With a Measurable Blood Alcohol Level with a Prior), felonies and crimes which
18 bear a substantial relationship under Section 2910, Title 10, California Code of Regulations, to
19 the qualifications, functions or duties of a real estate licensee.

20 6

21 The facts alleged above constitute cause under Sections 490 and 10177(b) of the
22 Code for suspension or revocation of all licenses and license rights of Respondent under the
23 Real Estate Law.

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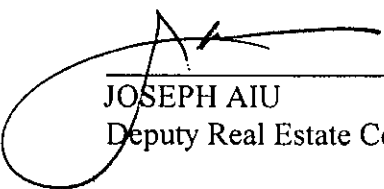
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1 MATTER IN AGGRAVATION

2 7

3 On or about February 10, 2003, in the Superior Court, County of San Diego,
4 Respondent was convicted of a violation of Section 23152(A) of the California Vehicle Code
5 (Driving Under the Influence).

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

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12 
13 JOSEPH AIU
14 Deputy Real Estate Commissioner

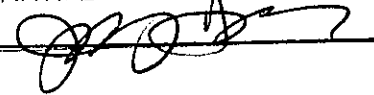
15 Dated at San Diego, California,
16 this 10 day of March, 2009
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1 CHERYL D. KEILY, Counsel (SBN 94008)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-5770

FILED

JUN 11 2008

DEPARTMENT OF REAL ESTATE
BY: 

7
8
9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H- 35022 LA
13 SEAN GARRIE SEAGREN,) A C C U S A T I O N
14 Respondent.)
15

16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against SEAN GARRIE SEAGREN, aka Sean G. Seagren, ("Respondent")
19 alleges as follows:

20 1.

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

24 2.

25 Respondent is presently licensed and/or has license
26 rights under the Real Estate Law, Part 1 of Division 4 of the
27

1 California Business and Professions Code ("Code"), as a real
2 estate salesperson.

3 3.

4 (CRIMINAL CONVICTIONS)

5 On or about June 14, 2005, in the Superior Court for
6 the State of California, County of San Diego, in Case No.
7 CN192762, Respondent was convicted of violating California Penal
8 Code Section 243(e)(1) (Battery on Person in Dating
9 Relationship), a misdemeanor. The underlying facts of this crime
10 involve moral turpitude, and bear a substantial relationship
11 under Section 2910, Title 10, Chapter 6, California Code of
12 Regulations to the qualifications, functions or duties of a real
13 estate licensee.

14 4.

15 In aggravation, on or about January 25, 2007, in the
16 Superior Court for the State of California, County of San Diego,
17 in Case No. CN219971, Respondent was convicted of violating
18 California Penal Code section 166(c)(1) (Violation of Protective
19 Order), a misdemeanor.

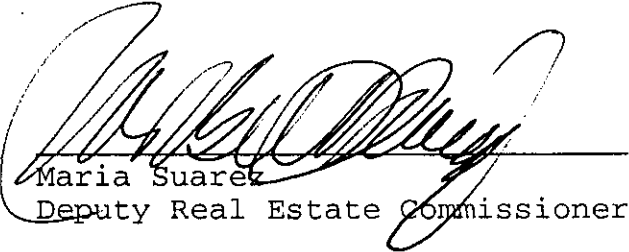
20 5.

21 The crime of which Respondent was convicted, as
22 described in Paragraph 3, above, constitutes cause under
23 Sections 490 and 10177(b) of the Code for the suspension or
24 revocation of the license and license rights of Respondent under
25 the Real Estate Law.

26 ///

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 the licenses and license rights of
5 Respondent, SEAN GARRIE SEAGREN, under the Real Estate Law (Part
6 1 of Division 4 of the Business and Professions Code) and for
7 such other and further relief as may be proper under other
8 applicable provisions of law.

9 this 10th day of June, 2008.

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13 
14 Maria Suarez
15 Deputy Real Estate Commissioner
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25 cc: SEAN GARRIE SEAGREN
26 Joseph Wolf Garrie
27 Maria Suarez
Sacto.