

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANDRE VAHIK SARKISSIAN,

Respondent.

Case No. H-35032 LA

OAH No. 2008070714

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 22, 2008, in Los Angeles, California.

Shari Sveningson, Counsel, represented complainant Robin Trujillo, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Respondent Andre Vahik Sarkissian represented himself and was present throughout the administrative hearing.

The matter was submitted on September 22, 2008.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 6, 2008, Robin Trujillo, a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California, signed the accusation in her official capacity. The accusation sought the suspension or revocation of the real estate salesperson's license issued to Andre Vahik Sarkissian (Sarkissian or respondent) for a real estate salesperson's license based upon his 2007 conviction for unlawfully displaying a fraudulently obtained driver's license.

The accusation and other required jurisdictional documents were served on Sarkissian, who timely filed a notice of defense.

On September 22, 2008, the administrative record was opened. Jurisdictional documents were presented, documentary evidence was produced and sworn testimony was

received. Closing arguments were given thereafter, the record was closed, and the matter was submitted.

License History

2. On September 12, 2006, the Department of Real Estate (the Department) issued real estate salesperson's license no. 01766995 to Sarkissian.

Sarkissian currently has no employing broker. He has not completed any real estate transactions. His license expires on September 11, 2010, unless suspended or revoked.

There is no history of any discipline having been imposed against the real estate salesperson's license issued to Sarkissian.

Sarkissian's Conviction

3. On June 26, 2007, Sarkissian was convicted on his plea of nolo contendere of violating Vehicle Code section 14610, subdivision (a)¹ (unlawfully displaying a fraudulently obtained driver's license), a misdemeanor necessarily involving moral turpitude, in the Superior Court of California, County of Los Angeles, Glendale Courthouse, in Case No. 7GN01891 entitled *People v. Andre V. Sarkissian*. Count 1 of the misdemeanor complaint, charging Sarkissian with violating Penal Code section 148.9, subdivision (a) (falsely representing himself as another person to a police officer) was dismissed as a part of the plea bargain.

Imposition of sentence was suspended and Sarkissian was placed on 24 months summary probation. Terms and conditions of Sarkissian's probation required him to pay fines and fees of approximately \$500.00, to perform nine days of Caltrans service or graffiti removal, and to obey all laws.

Circumstances of the Offense

4. By reason of his guilty plea, Sarkissian stands convicted of each element required to be proven in order to establish a conviction of violating Vehicle Code section 14610, subdivision (a) (unlawful display of fraudulently obtained driver's license).²

¹ Vehicle Code section 14160 provides in part:

“(a) It is unlawful for any person:

(1) To display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, fraudulently altered, or fraudulently obtained driver's license.”

² In administrative disciplinary proceedings, a licensee may not seek to impeach a prior criminal conviction by means of an “an inquiry into the circumstances surrounding the offense.” On the other hand, the licensee “should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation.” (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

In explanation, Sarkissian testified that when he left his home on February 15, 2007, he mistakenly took his older brother's wallet, which was identical to his own wallet. After Sarkissian visited a lounge in the San Fernando Valley, Glendale Police Officer Sean Snow (Officer Snow) stopped the vehicle Sarkissian was driving for exceeding the speed limit. According to the investigating officer's report,³ Sarkissian identified himself to Officer Snow as "Allen Sarkissian" and presented the officer with a driver's license that belonged to his older brother. During a brief investigation which followed, Officer Snow came to believe that Sarkissian had given him his brother's driver's license, and not his own. Officer Snow wrote out a citation in the name of Allen S. Sarkissian, using the driver's license he had been given. Officer Snow took the citation to Sarkissian and said, "O.K. Allen, here is your citation." Sarkissian then signed the citation at Officer Snow's request. The signature was scribbled and a reasonable person could not determine if Sarkissian signed the citation "Andre Sarkissian" or "Allen Sarkissian." Officer Snow then asked Sarkissian to step out of the vehicle advising him, "Your name is not Allen, so what is your real name." Sarkissian replied, "It's Allen."

At the hearing, Sarkissian testified he could not remember precisely what he told the investigating officer, that he did not sign his brother's name to the citation, but instead signed his own, and that after he was arrested he told Officer Snow that he was in possession of his brother's wallet and identification by mistake, and that was the reason he inadvertently presented his brother's driver's license.

The investigating officer's report did not contain Sarkissian's explanation that he accidentally came into possession of his brother's driver's license.

Sarkissian testified he entered a plea of nolo contendere because he wanted to end the criminal proceedings. Sarkissian was represented in that matter by retained counsel.

5. Sarkissian testified that he had to post bond as a result of his arrest, that he had to pay a \$500 fine, that he had to provide nine days of Caltrans service, that he had to pay his attorney \$4,000, and that he had to pay \$380 to get his car out of impound. Sarkissian characterized himself as a "victim."

³ The investigating officer's report was received under *Lake v. Reed* (1997) 16 Cal.4th 448, which considered what kinds of hearsay evidence are admissible under the Government Code section 11513 in an administrative proceeding. That opinion concluded that a law enforcement officer's direct observations which were memorialized in the officer's report were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and were sufficient to support a factual finding. The opinion concluded that admissions by a party that were memorialized in such a report were also admissible as under Evidence Code section 1220 and were sufficient to support a factual finding. Citing Government Code section 11512, the Supreme Court concluded that other hearsay statements set forth in the officer's report could be used for the purpose of supplementing or explaining other evidence, but that they were not sufficient by themselves to support a factual finding unless – as with the public employees records exception to the hearsay rule and the party admission exception to the hearsay rule – such hearsay would be admissible over objection in civil actions.

Sarkissian's Background and Evidence of Rehabilitation

6. Sarkissian was born on December 24, 1986, in Glendale, California. He grew up in Glendale, graduating from Hoover High School in 1995. Sarkissian lives with his parents and older brother in their Glendale home. His father is a real estate licensee and his mother is a teacher.

After high school, Sarkissian attended Glendale Community College for two years, obtaining an associate's degree in general education in 2008. He then enrolled at California State University, Northridge, where he is a junior. Sarkissian testified he carries a 3.00 grade point average and majors in Business Management.

Sarkissian is currently employed at the Wells Fargo Bank branch office in Eagle Rock as a personal banker.

Sarkissian has not been arrested, much less convicted, of any other crime. With regard to the criminal offense giving rise to this disciplinary proceeding, Sarkissian denied taking his brother's license to purchase alcoholic beverages at the lounge he visited with his friends before the traffic stop.

Sarkissian did not provide any documentary evidence or testimony to corroborate any portion of his testimony.

Evaluation

7. Sarkissian's conviction is substantially related to the qualifications, functions, and duties of a real estate licensee. Despite Sarkissian's testimony to the contrary, the clear and convincing evidence established that Sarkissian presented his brother's driver's license to Officer Snow and misrepresented himself. Officer Snow had no reason to be less than truthful about his encounter with Sarkissian. Officer Snow provided Sarkissian with several opportunities to provide his true identity, but Sarkissian persisted in representing that he was his brother to avoid the consequences of a speeding ticket. The conviction, Sarkissian's representations to Officer Snow, and his manner of testimony in this proceeding raised significant questions about his honesty and truthfulness, two qualities that bear on one's fitness and qualification to be a real estate licensee.

Less than two years have passed since Sarkissian's conviction. Sarkissian paid his fines and provided public service as ordered. He remains on probation. His conviction has not been expunged. Sarkissian testified that he enjoyed a stable family life, but no one from his family provided testimony or other evidence to support that claim. Sarkissian has been continuously engaged in a course of formal education and he has been gainfully employed since the conviction. Sarkissian did not establish that he has any significant or conscientious involvement in community, church or privately-sponsored programs that provide social benefits or ameliorate social problems. Most importantly, in denying any wrongdoing and claiming that he was the victim, Sarkissian did not establish a change in attitude from that

which existed at the time of the conduct in question. On this record, it would not be in the public interest to permit Sarkissian to retain his real estate license, even on a restricted basis.

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.)

Applicable Statutes

3. 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”

4. Business and Professions Code section 10177 provides in pertinent 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

5. 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.)

6. Where the Legislature delegates to an administrative agency the responsibility to implement a statutory scheme through rules and regulations, the courts will interfere only when the agency has clearly overstepped its statutory authority or violated a constitutional mandate (*Ford Dealers Association v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 356), and deference should be given to an administrative agency's interpretation of a statute or regulation involving its area of expertise. (*Communities for a Better Environment v. State Water Resources Control Board* (2005) 132 Cal.App.4th 1313, 1330.)

7. California Code of Regulations, title 10, section 2910 sets forth the Department's substantial relationship criteria. Under the Department's criteria, Sarkissian's misconduct was substantially related to the qualifications, functions, and duties of a real estate licensee because the conviction involved the employment of fraud, deceit, falsehood or misrepresentation to achieve an end (subd. (a)(4)) and doing an unlawful act with the intent to confer a financial benefit upon himself (subd. (a)(8)).

Rehabilitation

8. 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.)

9. The Department's criteria of rehabilitation are set forth in California Code of Regulations, title 10, section 2912. The evidence in rehabilitation under these criteria was set forth in Factual Findings 7-10.

Cause Exists to Impose Discipline


10. Cause exists to impose discipline against Sarkissian's real estate salesperson's license under Business and Professions Code sections 490 and 10177, subdivision (b). Sarkissian was convicted of a crime substantially related to the qualifications, functions and duties of a real estate licensee. The conviction occurred within the last two years. Sarkissian remains on probation for that conviction. Sarkissian showed no remorse for the misconduct underlying the conviction. Sarkissian is not active in the real estate practice. He does not have an employing broker. There was an insufficient showing in explanation, mitigation, and rehabilitation to permit Sarkissian to retain his real estate salesperson's license, even on a restricted basis. Revocation is mandated under these circumstances.

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

ORDER

All licenses and licensing rights of respondent Andre Vahik Sarkissian under the Real Estate Law are revoked.

DATED: 9/30/08.



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

Handwritten initials/signature

1 SHARI SVENINGSON, Counsel (SBN 195298)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

4 Telephone: (213) 576-6982
(Direct) (213) 576-6907

FILED
JUN 12 2008
DEPARTMENT OF REAL ESTATE

K. Medelby

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)	No. H-35032 LA
13 ANDRE VAHIK SARKISSIAN,)	<u>A C C U S A T I O N</u>
14 Respondent.)	
15 _____)	

16 The Complainant, Robin Trujillo, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against ANDRE VAHIK SARKISSIAN, aka Andre V. Sarkissian
19 ("Respondent") alleges as follows:

20 1.

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

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2.

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

3.

(CRIMINAL CONVICTION)

On or about June 26, 2007, in the Superior Court of California, County of Los Angeles, in case no. 7GN01891, Respondent was convicted of violating Vehicle Code 14610(a)(1) (Unlawful Display Suspended/Fraudulent License), a misdemeanor. This crime involves moral turpitude, which bears a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

4.

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

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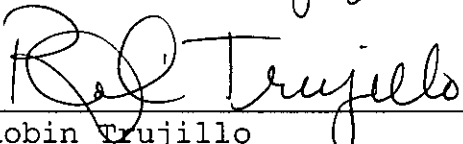
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of
5 Respondent, ANDRE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

9 Dated at Los Angeles, California *this 6 day of June 2008.*

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11 
12 Robin Trujillo
13 Deputy Real Estate Commissioner
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23 cc: ANDRE VAHIK SARKISSIAN
24 Robin Trujillo
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