

FILED  
AUG 16 2010  
DEPARTMENT OF REAL ESTATE

By C. J.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) No. H-35428 LA  
)  
VICENTE R. ARZATE, )  
)  
Respondent. )

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: VICENTE R. ARZATE  
641 Ensign Place  
Oxnard, CA 93035

On September 8, 2009, a restricted real estate salesperson license was issued by the Department of Real Estate ("Department") to Respondent on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Order of August 17, 2009, in Case No. H-35428 LA. This Order, which became effective on September 8, 2009, provided that the right to a restricted real estate salesperson license was subject to the provisions of Section 10156.7 of the California Business and Professions Code ("Code") and to enumerated additional terms, conditions and restrictions imposed under authority of Section

1 10156.5 of said Code. Among those terms, conditions and  
2 restrictions, Respondent was required, within nine (9) months  
3 from the effective date of the Decision, to present evidence  
4 satisfactory to the Real Estate Commissioner that Respondent  
5 has, since the most recent issuance of an original or renewal  
6 real estate license, taken and successfully completed the  
7 continuing education requirement of Article 2.5 of Chapter 3 of  
8 the Real Estate Law for renewal of a real estate license. If  
9 Respondent fails to satisfy this condition, the Commissioner may  
10 order the suspension of the restricted license until the  
11 Respondent presents such evidence. The Commissioner shall  
12 afford Respondent the opportunity for a hearing pursuant to the  
13 Administrative Procedure Act to present such evidence.

14           The Commissioner has determined that as of June 8,  
15 2010, Respondent has failed to satisfy this condition, and as  
16 such, is in violation of Section 10177(k) of the Business and  
17 Professions Code. Respondent has no right to renew the  
18 restricted license if this condition isn't satisfied by the date  
19 of its expiration. Section 10156.7 of the Business and  
20 Professions Code.

21           NOW, THEREFORE, IT IS ORDERED under authority of  
22 Section 10156.7 of the Business and Professions Code of the  
23 State of California that the restricted real estate salesperson  
24 license heretofore issued to Respondent and the exercise of any  
25 privileges thereunder is hereby suspended until such time as  
26 Respondent provides proof satisfactory to the Department of  
27 compliance with the condition referred to above, or pending

1 final determination made after the hearing (see "Hearing Rights"  
2 set forth below).

3 IT IS FURTHER ORDERED that all license certificates  
4 and identification cards issued by the Department which are in  
5 the possession of Respondent be immediately surrendered by  
6 personal delivery or by mailing in the enclosed, self-addressed  
7 envelope to:

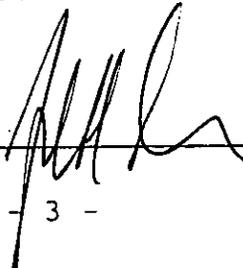
8 Department of Real Estate  
9 Attn: Flag Section  
10 P. O. Box 187000  
11 Sacramento, CA 95818-7000

12 HEARING RIGHTS: Pursuant to the provisions of Section  
13 10156.7 of the Business and Professions Code, you have the right  
14 to a hearing to contest the Commissioner's determination that  
15 you are in violation of Section 10177(k) of the Code. If you  
16 desire a hearing, you must submit a written request. The  
17 request may be in any form, as long as it is in writing and  
18 indicates that you want a hearing. Unless a written request for  
19 a hearing, signed by or on behalf of you, is delivered or mailed  
20 to the Department at 320 W. 4<sup>th</sup> Street, Room 350, Los Angeles,  
21 California 90013, within 20 days after the date that this Order  
22 was mailed to or served on you, the Department will not be  
23 obligated or required to provide you with a hearing.

24 This Order shall be effective immediately.

25 DATED: 8-12, 2010.

26 JEFF DAVI  
27 Real Estate Commissioner

  
\_\_\_\_\_

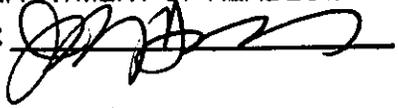
**FILED**

AUG 19 2009

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

\* \* \* \* \*

In the Matter of the Accusation of )  
 )  
 )  
 VICENTE R. ARZATE, )  
 )  
 )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

No. H-35428 LA  
L-2009030421

DECISION

The Proposed Decision dated July 22, 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.

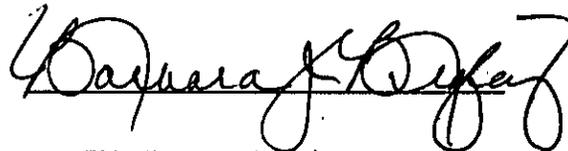
The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

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 September 8, 2009.

IT IS SO ORDERED 8-17-09

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 Accusation Against:

**VICENTE R. ARZATE,**

Respondent.

Case No. H-35428 LA

OAH No. 2009030421

**PROPOSED DECISION**

This matter was heard by Sophie C. Agopian, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 4, 2009, in Los Angeles.

Julie To, Real Estate Counsel, represented Complainant, Maria Suarez, Deputy Real Estate Commissioner of the California Department of Real Estate (Department). Fredrick M. Ray, Attorney at Law, represented Vicente R. Arzate (Respondent), who was also present.

Oral and documentary evidence was received. The record was held open until June 25, 2009, to allow Respondent to submit additional evidence. Respondent timely submitted additional evidence, which was marked for identification as Exhibit B. Complainant filed a notice stating that she did not object to the admission of Exhibit B as "administrative hearsay," subject to Government Code section 11513, subdivision (d). Exhibit B was admitted into evidence understanding that it constitutes administrative hearsay. On June 25, 2009, the record was closed, and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. On October 30, 2008, Complainant brought the Accusation in her official capacity. Respondent timely filed a Notice of Defense on Accusation, and this hearing ensued
2. Respondent has been licensed by the Department as a real estate salesperson since 2003.

3. On December 21, 2007, in the Ventura County Superior Court, Case No. 2005010130, Respondent pled guilty and was convicted of violating Penal Code section 487, subdivision (a) (grand theft), a felony. Respondent was sentenced to serve 120 days in jail, 36 months of informal probation, and ordered to pay restitution in the total amount of \$20,581.32 to victims.

4. The circumstances underlying Respondent's conviction are that in early 2004, Respondent and two friends conspired to falsely report a truck stolen, and recover insurance money. The truck belonged to Respondent's friends, who filed the fraudulent insurance claim and received approximately \$12,000 from the insurance company. Around the same time, the co-conspirators altered the vehicle identification number (VIN) on the truck, so that they could re-sell the truck and recover additional money. Respondent registered the truck in his name as a new owner, and sold the truck to a commercial dealership. Respondent received from the sale \$6,250.00 and a 1997 Ford F-250 truck.

5. In 2006, Respondent was arrested and charged with two felonies, conspiracy to commit a crime and grand theft of property, and one misdemeanor for possession of a vehicle with an altered VIN. Respondent originally pled not guilty on all three counts, but after a jury trial commenced, accepted a plea bargain, resulting in the dismissal of two of the three counts, and his guilty plea for the grand theft count. The restitution that Respondent was ordered to pay was to compensate both the insurance company and the dealership for their losses.

6. At the hearing, Respondent showed remorse for his conduct. He testified that it was an extreme deviation from his typical behavior and his character. He only agreed to commit the crimes as a favor to a friend. He testified that he was only to receive \$3,000.00 from the transactions, and did not really need the money at the time because he was earning sufficient income from real estate. Respondent acknowledged all the people he has hurt by his conduct. He hurt his wife and three children, who suffered emotionally and financially, while he was in jail. He hurt his friends, people in his community, and consumers in the State, who must pay higher insurance premiums because of such fraudulent conduct.

7. Respondent served 77 days in county jail (out of his 120-day sentence) and was employed as a real estate salesperson soon after his release. It was established by his plea agreement that he would be allowed to serve less time in jail, if he made a good faith effort to pay his restitution. Due to his current employment, he has paid approximately one-third of the restitution he owes, and is currently making monthly payments toward the remainder of his restitution. He is still on probation, and has severed his relationship with his friends, the co-defendants.

8. Respondent's wife and close friend testified on Respondent's behalf. Both witnesses corroborated Respondent's testimony that his criminal conduct was out of character for him, he is extremely remorseful for his conduct, and is presently

doing everything he can to make amends. Although their testimony appeared genuine and credible, each has known Respondent for seven years or less—just one or two years before the crimes were committed. Respondent did not disclose his conduct to either his wife or friend until after he was arrested and/or serving time in jail for his crimes.

9. Respondent submitted a dozen letters from professional and personal peers in support of him retaining his real estate license. Very few of these letters were relevant to Respondent's rehabilitation because they primarily concern Respondent's character, community involvement and/or family commitments prior to his conviction, when he was engaged in the criminal acts. However, it is worth noting that Respondent was described as honest and ethical with respect to his real estate transactions, and a "good family man." He was also described as an asset to the largely Spanish-speaking community he serves because he is one of the few salespeople with Spanish bilingual skills.

10. The character evidence which carries the greatest weight with respect to Respondent's rehabilitation is real estate broker, Irma Arreguin, who currently employs him. Ms. Arreguin stated in a letter to the Department that she has known Respondent for six years and has recently employed him. Respondent disclosed his conviction to her, although it was not established if he disclosed the underlying circumstances as well. Ms. Arreguin believes Respondent is remorseful for what he has done, and is sincere in his willingness to help others. Since his employment with her, he has demonstrated that he is honest and trustworthy, and has a good reputation in the real estate community. Ms. Arreguin stated that she would be willing to supervise his transactions if he were allowed to continue to work.

## LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's license pursuant to Business and Professions Code sections 490, and 10177, subdivision (b), because Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a) (1), (4) and (8), in that Respondent fraudulently obtained funds and property belonging to another, employed falsehood and misrepresentation to achieve an end, and committed unlawful acts with the intent of receiving a financial benefit. (Factual Findings 3-5.)

2. As cause exists to discipline Respondent's license, Respondent bears the burden of establishing his rehabilitation. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.)

3 The Department has developed criteria to evaluate a licensee's rehabilitation following a criminal conviction under California Code of Regulations, title 10, section 2912, subdivisions (a) through (n). Respondent had not met all of the criteria. Respondent has not completed the term of his criminal probation, and continues to make restitution payments. (Subdivisions (a) and (b).) However, it was established that Respondent is making a good faith effort toward paying his restitution. (Factual Finding 7.) Respondent's current employment is allowing him to continue to make restitution payments. (Factual Finding 7.)

4. Respondent sufficiently established that he is remorseful for his criminal conduct. (Subdivision (m) and Factual Finding 6.) The people who have submitted statements in support of him appear to be upstanding citizens who are committed to their work, families, and the betterment of their community. (Subdivision (i) and Factual Findings 8-10.) His friends who have knowledge of his conviction continue to hold him in high esteem because of his community involvement, professional reputation, and his commitment to family. (Subdivision (j) and Factual Findings 8-10.) Because this is Respondent's first and only conviction, and because it was established that he is unlikely to commit another crime, there does not appear to be substantial risk to the public by allowing Respondent to continue selling real estate.

5. Respondent's current employer has confidence in his ability and character to continue in his profession in an honest and ethical manner. (Factual Finding 10.) Due to her confidence in him, and her willingness to supervise his transactions, it is recommended that Respondent be granted a restricted license for the term of five (5) years.

### ORDER

All licenses and licensing rights of Respondent, Vicente R. Arzate, 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 therefore 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 this 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 (5) 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.

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 the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of Respondent's license until Respondent passes the examination.

7. 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.

DATED: July 22, 2009

  
SOPHIE C. AGOPIAN  
Administrative Law Judge  
Office of Administrative Hearings



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

3 3.

4 On or about December 21, 2007, in the Superior Court  
5 of the State of California, County of Ventura, Case No.  
6 2005010130, Respondent was convicted of violating Penal Code  
7 Section 487 (a) (grand theft), a felony. Respondent was  
8 sentenced to 120 days in jail, 36 months of informal probation,  
9 and ordered to pay restitution of \$6,250.00 to one victim and  
10 \$14,331.31 to another victim.

11 4.

12 This conviction, by its facts and circumstances,  
13 involves moral turpitude and bears a substantial relationship  
14 under Section 2910, Title 10, Chapter 6, California Code of  
15 Regulations to the qualifications, functions or duties of a real  
16 estate licensee.

17 5.

18 The crime of which Respondent was convicted, as  
19 described in Paragraph 3 above, constitutes cause under Sections  
20 490 and 10177(b) of the Code for the suspension or revocation of  
21 the license and license rights of Respondent under the Real  
22 Estate Law.

23 ///

24 ///

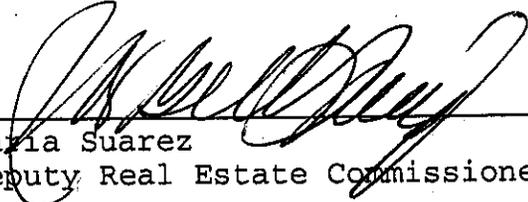
25 ///

26 ///

27 ///

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, VICENTE R. ARZATE, under the Real Estate Law (Part 1  
6 of Division 4 of the Business and Professions Code) and for such  
7 other and further relief as may be proper under other applicable  
8 provisions of law.

9 Dated at Los Angeles, California  
10 this 28th day of October, 2008.

11  
12  
13   
14 Maria Suarez  
15 Deputy Real Estate Commissioner  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

26 cc: VICENTE R. ARZATE  
27 Coldwell Banker Residential Brokerage  
Maria Suarez  
Sacto.