

FILED

JUN 22 2010

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: *R. McCreary*

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In the Matter of the Accusation of)	No. H-36259 LA
))
JEFFREY MICHAEL KADAU,) L-2009110315
))
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Respondent.)
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DECISION

The Proposed Decision dated May 18, 2010, 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 JUL 12 2010.

IT IS SO ORDERED

6-10-2010

JEFF DAVI
Real Estate Commissioner

[Signature]

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

In the Matter of the Accusation of:

JEFFREY MICHAEL KADAU,

Respondent.

Case No. H-36259 LA

OAH No. 2009110315

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge with the Office of Administrative Hearings, on March 26, 2010, in Los Angeles.

Shari Sveningson, Staff Counsel, represented Complainant.

Jeffrey Michael Kadau (Respondent) represented himself.

Oral and documentary evidence was received and argument was heard. The matter was submitted for decision on March 26, 2010.

FACTUAL FINDINGS

1. Complainant Maria Suarez filed the Accusation in her official capacity as a Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California.

2. On September 28, 2005, the Department issued real estate salesperson license number S/01512997, to Respondent. The license expired on September 27, 2009. Jurisdiction exists in this matter pursuant to Business and Professions Code section 10103.

Respondent's Conviction

3. On September 8, 2008, in the Superior Court of California, County of Kings, case number 08CM1654, Respondent was convicted on his plea of guilty of violating Vehicle Code section 2800.1, subdivision (a) (flight from pursuing peace officer) and Penal Code section 148, subdivision (a)(1) (obstruct, resist, or delay peace officer), both misdemeanors and crimes that are substantially related to the qualifications, functions, and duties of a licensed real estate salesperson.

4. Respondent was placed on conditional release probation under the supervision of the court for three years under terms and conditions including that he serve 15 days in jail (credit given for one day), he pay fines and fees totaling \$1,002, he obey all laws, he "totally abstain" from the use and/or possession of intoxicating beverages, he not frequent establishments where alcoholic beverages are sold and consumed on the premises, he abstain from the use of controlled substances, including marijuana, unless prescribed by a physician, and he not have any negative contact with law enforcement personnel.

5. The facts and circumstances underlying Respondent's conviction are: On May 30, 2008, at approximately 11:44 p.m., a Kings County deputy sheriff was dispatched to a report of a suspicious person on the 2200 block of Grangeville Avenue in Lemoore. The deputy was advised that the person, later identified as Respondent, was knocking on the door of the reporting party's residence and claiming that people were trying to kill him. As the deputy was nearing the residence, the dispatcher advised that Respondent had left the residence and was traveling eastbound on Grangeville Avenue in a grey Toyota pick-up truck. The deputy was traveling westbound on Grangeville Avenue and saw Respondent's truck approaching him. The deputy activated the overhead emergency lights on his vehicle, but Respondent continued traveling eastbound. The deputy, with his emergency lights on, followed Respondent's vehicle for about one and one-half miles.

6. The deputy saw Respondent pull into the driveway of a residence and open his car door. The deputy ordered Respondent to lay on the ground. Respondent complied and said, "Ok, but who are you?" The deputy identified himself. As the deputy approached Respondent, Respondent "rapidly got up and ran towards the residence screaming for help." At that time, the deputy used his taser on Respondent. Respondent fell to the ground. When the taser was deactivated, Respondent began to roll away from the deputy. Based on his training and experience, the deputy knew that criminals use this technique to break off the wires of the taser probes. The deputy used the taser a second time on Respondent. Respondent was shouting for help and saying that the deputies on scene were trying to kill him. Respondent refused to follow the deputies' instructions. He resisted as the deputies were handcuffing him, causing the deputies to use the taser a few more times. During this time, Respondent claimed that the deputy had killed him and he was dead. After he was handcuffed, Respondent was transported to the hospital for treatment.

7. The deputy searched Respondent's vehicle at the scene and found a small amount of marijuana in the center console. Based on his observations of Respondent's actions, the deputy believed that Respondent may have been under the influence of PCP. The deputy knew, based on his experience and training, that PCP can be infused into marijuana and smoked.

Aggravating Factor

8. In aggravation, it was established that on November 19, 2003, in the Superior Court of California, County of Santa Barbara, case number 1107433, Respondent was convicted on his plea of no contest of violating Vehicle Code section 23152, subdivision (a)

(driving under the influence of alcohol), a misdemeanor. Imposition of sentence was suspended. Respondent was placed on probation for three years under terms and conditions including that he complete a three-month alcohol or drug counseling program for first offenders.

Mitigation

9. At the hearing, Respondent testified he does not know what caused his behavior that led to his arrest on May 30, 2008. He contends that, a few hours before the incident, he went to a friend's house and had two beers. Other people who Respondent did not know were also at the house. After two hours, Respondent began feeling strange. Respondent suspected that "something was put in my drink." He felt as if his life was in danger. He claims someone had taken his cell phone. He left the house and drove to the nearby home of his friend's parents to get help. This part of Respondent's testimony appears to be corroborated by the Offense Report (exhibit 4), which stated that a woman had come out of the residence where Respondent had stopped his vehicle and started talking to Respondent by name. Respondent recalls being tasered by the police. He woke up in the hospital and then was taken to jail. Respondent denied he was under the influence of PCP or mushrooms, and denied he willingly took those substances. He testified he has never been in a situation where he thought others were trying to kill him.

10. No evidence was presented at the hearing to corroborate or refute Respondent's claim that, unknown to him, "something" was put in his drink earlier in the evening of May 30, 2008, prior to his encounter with the deputy sheriffs.

Rehabilitation

11. Respondent is 28 years old. He is not married and currently takes care of his parents. He received a bachelor's degree in business administration from the University of Redlands in 2004. He also has an associate's degree in fire protection. He attends church regularly. He has coached football at Edison High School, off and on, over the last five years.

12. Respondent was last employed at Wilson's Motorcycles in Fresno, where he worked from April 2008 to January 2009. In 2007, he worked as a pizza delivery driver. From 2003 to 2005, Respondent was employed by Regalia Mortgage in Irvine as a loan officer and manager.

13. Respondent is currently on probation for his 2008 conviction, and is scheduled to remain on probation until 2011. He testified that, for his 2008 conviction, he served three days in jail and completed 10 to 20 days of community service. The probation terms set forth in the court records (exhibit 3) do not specifically include community service. However, there is a reference in the court records that Respondent was ordered to report to the Alternative Sentencing Program coordinator "in regard to the jail time or community service hours imposed." Further, the probation terms set forth in the court records do not

specifically include completion of a DUI program. However, there is an entry in the court records for January 12, 2009, indicating "completion of DUI school" was "filed."

14. At the hearing, Respondent testified he has "learned a lot" from the May 30, 2008 incident. He knows not to associate with people he does not know. He stopped drinking alcohol because he wants to "try to recover my life." Respondent previously completed an alcohol/drug counseling program in connection with his 2003 DUI conviction described in Factual Finding 8, above. In addition, the 2008 court records indicate Respondent completed DUI school, but Respondent offered no testimony about that.

15. Respondent has completed all classes for the real estate broker exam. He has taken but not passed the broker exam. He would like to invest in real property, and fix and rebuild properties. Respondent has no history of prior discipline against his real estate salesperson license.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke Respondent's real estate salesperson license under Business and Professions Code sections 490 and 10177, subdivision (b), for conviction of crimes that are substantially related to the qualifications, functions, or duties of a real estate licensee, based on Factual Findings 3-7.

2. Respondent's crimes are substantially related to the qualifications, functions, and duties of a real estate licensee because they involve doing an unlawful act "with the intent or threat of doing substantial injury to the person or property of another." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Vehicle Code section 2800.1, subdivision (a), provides, in pertinent part: "Any person who, while operating a motor vehicle and with the intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer's motor vehicle, is guilty of a misdemeanor . . ." A person violates Penal Code section 148, subdivision (a)(1), who "willfully resists, delays, or obstructs any . . . peace officer . . . in the discharge or attempt to discharge any duty of his or her office or employment." Attempting to evade a pursuing peace officer's vehicle poses a threat of substantial injury to the users of streets and roadways. Resisting or obstructing a peace officer poses a threat of substantial injury to the involved peace officer and possibly others in the vicinity.

3. As cause for discipline against Respondent's license has been established, Respondent bears the burden of proving his rehabilitation from his criminal conviction. (See, *Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.) The Department's criteria to evaluate the rehabilitation of a licensee, after a criminal conviction, are set forth in California Code of Regulations, title 10, section 2912.

4. Reviewing these criteria, two years have not yet passed since Respondent's 2008 conviction. (§ 2912, subd. (a).) He has not yet completed his criminal probation. (§ 2912, subd. (e).) No evidence was presented that he has paid the fines imposed in connection with his conviction. (§ 2912, subd. (g).) In Respondent's favor, he no longer

associates with people he does not know, he is fulfilling his familial responsibilities by taking care of his parents, and he has abstained from consuming alcoholic beverages. (§ 2912, subs. (i), (j), and (f).)

5. Respondent presented insufficient evidence showing a change in attitude from that which existed at the time of the conduct that led to his 2008 conviction. (§ 2912, subd. (m).) Respondent's testimony that he has stopped using alcohol, by itself, is insufficient to refute concerns about his use and possible abuse of alcohol or drugs. There was no testimony or other evidence from family members, friends, and acquaintances, regarding Respondent's present conduct in light of his past behavior, and no testimony or other evidence from any potential employing broker who might to be willing to supervise Respondent if he is permitted to retain his real estate salesperson license. In addition, Respondent's testimony that he no longer consumes alcohol, and no longer associates with unfamiliar people, does not show a change in attitude since his conviction because he is currently still on probation. Since people have a strong incentive to behave properly while under the supervision of the criminal justice system, little weight is generally placed on the fact that a licensee has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)


6. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

7. This case warrants revocation of Respondent's license. It was not established that Respondent is rehabilitated from his criminal conviction. He has engaged in behavior that raises concerns about whether he can perform the duties of a licensed real estate salesperson consistent with public protection. It would be contrary to the public interest and welfare to allow Respondent to retain a real estate salesperson license at this time, even on a restricted basis.

ORDER

All licenses and licensing rights of Respondent Jeffrey Michael Kadau under the Real Estate Law are revoked.

DATED: May 18, 2010


ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

Handwritten initials/signature

SHARI SVENINGSON, Counsel (SBN 195298)
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Los Angeles, California 90013-1105

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DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-36259 LA
JEFFREY MICHAEL KADAU,)	<u>A C C U S A T I O N</u>
Respondent.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against JEFFREY MICHAEL KADAU, ("Respondent") alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation 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.

(CRIMINAL CONVICTIONS)

3.

On or about September 8, 2008, in the Superior Court of California, County of Kings, in case no. 08CM1654, Respondent was convicted of violating Vehicle Code Sections 23152(a) (DUI), 2800.1(A) (Evade Peace Officer) and Penal Code Section 148(A) (1) (Obstruction of Officer), all misdemeanors. These crimes are substantially related to the qualifications, functions or duties of a real estate licensee under Section 2910, Title 10, Chapter 6, California Code of Regulations.

4.

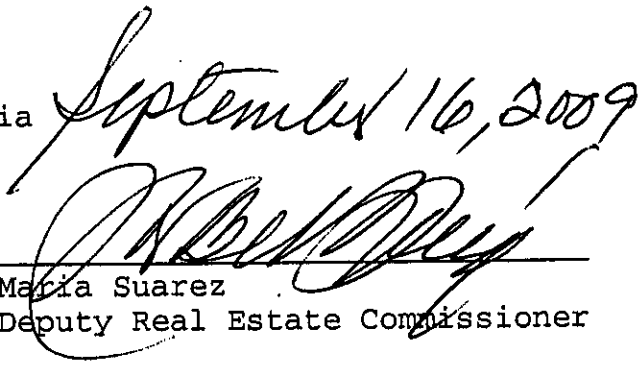
In aggravation, on or about December 16, 2003, in the Superior Court of California, County of Santa Barbara, Respondent was convicted of violating Vehicle Code Section 23152(a) (DUI), a misdemeanor.

5.

The crimes of which Respondent was convicted, as described in Paragraph 3 above, constitute 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.

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, JEFFREY MICHAEL KADAU, 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

September 16, 2009


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11 Maria Suarez
12 Deputy Real Estate Commissioner
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24 cc: JEFFREY MICHAEL KADAU
25 Lordsman, Inc.
26 Maria Suarez
27 Sacto.