

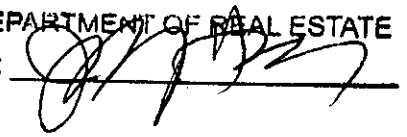
FILED

OCT 04 2010

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

* * * * *

In the Matter of the Accusation of)
)
)
 GREGORIO ERNESTO VARGAS,)
)
)
 Respondent.)
 _____)

No. H-36435 LA

L-2010021095

DECISION

The Proposed Decision dated August 16, 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.

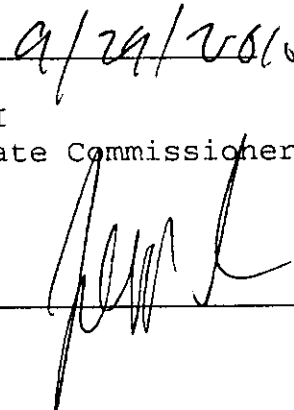
The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

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 OCT 25 2010

IT IS SO ORDERED

JEFF DAVI
Real Estate Commissioner



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

**In the Matter of the Accusation of
GREGORIO ERNESTO VARGAS,**

Respondent.

Case No. H-36435 LA

OAH No. 2010021095

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on July 19, 2010, in Los Angeles, California.

Julie To, Staff Counsel for the Department of Real Estate (Department), appeared on behalf of Complainant Maria Suarez, Deputy Real Estate Commissioner of the State of California.

Respondent Gregorio Ernesto Vargas, a.k.a. Gregorio Vargas or Gregorio Ernesto Varga Zabala, appeared on his own behalf.

Oral and documentary evidence was received, the record was closed, and the matter was submitted on July 19, 2010.

FACTUAL FINDINGS

1. On January 21, 2010, Complainant filed the Accusation in his official capacity. On April 14, 2010, Complainant filed a First Amended Accusation. Respondent timely filed a notice of defense.

2. The Department originally issued real estate salesperson license no. S/01717904 to Respondent on January 23, 2006. The license expired on January 22, 2010. The license was in full force and effect at all times relevant to the events in this matter. The lapsing of Respondent's license does not deprive the Department of jurisdiction to proceed with any disciplinary proceeding against Respondent, or to render a decision suspending or revoking his license. (Bus. & Prof. Code, § 10103.)

Respondent's Conviction

3. On September 11, 2008, in the Superior Court of the State of California, County of Orange, Case No. 08CF2041, Respondent pled guilty and was convicted of violating Penal Code section 550, subdivision (b)(1) (insurance fraud), a felony. The court found a factual basis for and accepted Respondent's plea. The court suspended imposition of sentence and placed Respondent on formal probation for three years under terms and conditions including that

Respondent pay fines and fees totaling \$720 and that he serve 30 days in the Orange County Jail, stayed pending completion of 40 hours of CalTrans community service.

4. The circumstances underlying the conviction are that on September 1, 2006, Respondent was driving home while under the influence of alcohol. (See Factual Finding 10, below.) He was involved in a car accident and called the police. While waiting for the police to arrive, Respondent called his insurance company for a tow truck to move his car off the freeway. During that telephone conversation, Respondent accepted an offer to increase the coverage on his automobile insurance policy but did not inform the carrier of the car accident. Sometime between September 5 and October 25, 2006, Respondent presented a claim to his carrier for the September 1, 2006, car accident, and deliberately misstated the date of the accident. The insurance company requested that he provide it with a copy of the police report concerning the accident, which he did.

5. In Respondent's Advisement and Waiver of Rights for a Felony Guilty Plea (Plea Form), which he signed on September 11, 2008, Respondent wrote that:

[o]n or about September 5, 2006, I knowingly made a false claim to 21st Century Insurance with the intent to defraud, namely, stated false time of accident.

6. Respondent paid all fines and fees and completed the other terms and conditions of his probation. On April 6, 2010, the court terminated probation early, reduced the count on which Respondent was convicted to a misdemeanor, set aside Respondent's guilty plea, entered a plea of not guilty, and dismissed the complaint under Penal Code section 1203.4.

7. As a circumstance in aggravation, to determine the degree of penalty, on or about January 5, 2007, in the Superior Court of the State of California, County of Orange, Case No. 06HM10187, Respondent pled guilty and was convicted of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol/drugs), a misdemeanor.

Rehabilitation

8. Respondent is 30 years old; he recently became a father. Respondent wants to be emotionally and financially stable in order to provide for his two-month-old daughter and to be a role model for her. His real estate license is the only means that he knows will allow him to continue to be employable and to support his daughter.

9. Respondent admits that he withheld information about the car accident when he increased his insurance coverage. He testified that he made a terrible mistake that has changed his life and given him a great deal of emotional pain. He attributed the mistake to the fact that he was feeling stress because his father was ill and because he was both working full-time and attending school, and that he had been out drinking on his way home from work. He called his action "stupid." He said it is not reflective of his true character and that he takes responsibility for it. He testified that he would never make the same mistake again.

10. Respondent was credible in his testimony at the hearing, both in terms of his demeanor, which was straightforward and direct, and in his ready admission of the circumstances underlying his conviction, for which Respondent appeared remorseful.

11. Respondent testified that he loves the real estate business and that he is a better person because of his license. Respondent works for CVC Real Estate Group in Lake Forest, issuing price opinions since January 2010 under the supervision of Corey Rhodes, a licensed broker. Respondent testified that he informed Mr. Rhodes of the hearing and of his two convictions. Mr. Rhodes told Respondent that, if Respondent obtains a restricted license, he could work under his supervision. This was confirmed in a letter of support from Mr. Rhodes, submitted by Respondent at the hearing. Mr. Rhodes wrote that Respondent has worked for his company since the summer of 2008, and that

Gregorio Vargas has been reliable, honest, and hard-working. During Mr. Vargas' employ we have not received complaints of any kind and hope for a positive outcome of his situation. We intend to keep Mr. Vargas here at CVC Real Estate Group Inc[.] should he be successful in retaining his license.

12. Respondent successfully completed the continuing education courses required for a real estate salesperson license on February 13, 2010. Respondent obtained a bachelor degree in business administration from California State University, Fullerton, in August 2009. He intends to obtain a master's degree.

13. Respondent volunteers through his church as a mentor to young adults, seeking to "expand their horizons." He coaches soccer and participates in church fundraisers. The church administrator wrote a letter, which Respondent submitted at the hearing, to confirm Respondent's volunteer activities.

14. In addition to the letters from his employer and his church, Respondent submitted a character reference letter from a personal friend, Oltion Georgio Krosi. Mr. Krosi wrote that Respondent is dedicated to his family and work, and that a favorable outcome will allow Respondent to support his family and daughter. Mr. Krosi also testified at the hearing that Respondent is honest, hard-working, and well liked. Respondent worked his way through school. He has changed his life, becoming a more cautious person since his daughter was born.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke Respondent's real estate salesperson license application under Business and Professions Code sections 490, subdivisions (a) and (c), and 10177, subdivision (b), on the ground that Respondent was convicted in 2008 of a crime substantially related to the qualifications, functions, or duties of a real estate licensee, based on Factual Findings 3 through 5.

2. Respondent's conviction was for a "substantially related" crime because the crime involved "[t]he employment of . . . fraud, deceit, falsehood or misrepresentation to achieve an end." (Cal. Code Regs., tit. 10 (Regulation), § 2910, subd. (a)(4).)

3. The Department has developed criteria, enumerated in the Department's regulations at Regulation section 2912 "for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee."

4. Considering all the relevant criteria, Respondent has established sufficient rehabilitation to warrant the issuance of a restricted license. Although the rehabilitation criteria call for the passage of at least two years from the most recent conviction or act that is the basis to deny an application (Regulation, § 2912, subd. (a)), less than one month remains before two years will have passed since Respondent's conviction for insurance fraud. Respondent has had his conviction expunged. (Regulation, § 2912, subd. (c).) He successfully completed his community service and received an early discharge from probation. (Regulation, § 2912, subd. (e).) He has paid all fines ordered by the court. (Regulation, § 2912, subd. (g).) He has maintained a stable family life and fulfilled his parental and familial responsibilities since his conviction. (Regulation, § 2912, subd. (j).) He has completed formal educational and vocational training courses for economic self-improvement. (Regulation, § 2912, subd. (k).) He is actively involved in community and church programs designed to provide social benefits or to ameliorate social problems. (Regulation, § 2912, subd. (l).) His attitude has changed significantly from that which existed when he committed the fraud for which he was convicted; his regret was evident and convincing in his own testimony and that of his friend, and his honesty is attested to by his employer, a real estate broker who has agreed to supervise Respondent if he receives a restricted license. (Regulation, § 2912, subd. (m)(1), (2).) There are no subsequent convictions that reflect an inability to conform to societal rules when considered in light of the conduct in question. (§ 2912, subd. (m)(5).) Respondent has demonstrated that his licensure as a real estate salesperson, under the close supervision of a licensed broker and under the appropriate restrictions set forth in the Order below,¹ would not pose a potential risk of harm to the public.

ORDER

Real estate salesperson license no. S/01717904, issued to Respondent Gregorio Ernesto Vargas, is hereby revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent under 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

¹ Respondent is not ordered to take and successfully complete the continuing education course required for renewal of a real estate license because, earlier this year, Respondent completed a 15-hour continuing education course in real estate practice, based on Factual Finding 12.

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 that 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 two 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 that shall certify:

- a. That the employing broker has read the Decision of the Commissioner that 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.

DATED: August 16, 2010

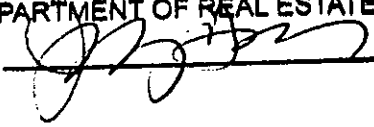

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

now
1 JULIE L. TO, Counsel (SBN 219482)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
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7

FILED

APR 14 2010

DEPARTMENT OF REAL ESTATE
BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-36435 LA
12) FIRST AMENDED
13 GREGORIO ERNESTO VARGAS,) A C C U S A T I O N
14 Respondent.)

15 The Accusation filed on January 21, 2010, is amended
16 in its entirety as follows:

17 The Complainant, MARIA SUAREZ, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against GREGORIO ERNESTO VARGAS, a.k.a. Gregorio Vargas or
20 Gregorio Ernesto Varga Zabala ("Respondent"), alleges as
21 follows:

22 1.

23 The Complainant, MARIA SUAREZ, a Deputy Real Estate
24 Commissioner of the State of California, makes this Accusation
25 in her official capacity.

26 ///

27 ///

1 2.

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

6 3.

7 On or about September 11, 2008, in the Superior Court
8 of the State of California, Orange County in Case No. 08CF2041,
9 Respondent was convicted of violating Penal Code Section
10 550(b)(1) (insurance fraud), a felony. Respondent was sentenced
11 to three years probation; 30 days in jail (40 hours Cal Trans);
12 and ordered to pay fines.

13 4.

14 In aggravation, on or about January 5, 2007, in the
15 Superior Court of the State of California, Orange County, in
16 Case No. 06HM10187, Respondent was convicted of violating
17 Vehicle Code Section 23152(a) (driving under the influence of
18 alcohol/drugs), a misdemeanor. Respondent was sentenced to
19 three years probation; two days in jail; ordered to pay fines
20 (or complete seven days of community service); and ordered to
21 complete a three-month Level 1 First Offender Alcohol Program.

22 5.

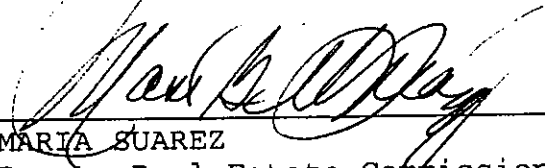
23 The conviction described in Paragraph 3, by its facts
24 and circumstances, is a crime of moral turpitude and bears a
25 substantial relationship under Section 2910, Title 10, Chapter
26 6, California Code of Regulations to the qualifications,
27 functions or duties of a real estate licensee.

The crime of which Respondent was convicted 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.

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 the licenses and license rights of Respondent, GREGORIO ERNESTO VARGAS, 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 14th day of April, 2010.


MARIA SUAREZ

Deputy Real Estate Commissioner

cc: GREGORIO ERNESTO VARGAS
Edward Corey Rhodes
MARIA SUAREZ
Sacto.
OAH

1 JULIE L. TO, Counsel (SBN 219482)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
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6 (Direct) (213) 576-6916

FILED

JAN 21 2010

DEPARTMENT OF REAL ESTATE

BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H- 36435 LA
12 GREGORIO ERNESTO VARGAS,) A C C U S A T I O N
13 Respondent.)
14 _____)

15
16 The Complainant, MARIA SUAREZ, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against GREGORIO ERNESTO VARGAS, a.k.a. Gregorio Vargas or
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22 The Complainant, MARIA SUAREZ, a Deputy Real Estate
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24 in her official capacity.

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27 rights under the Real Estate Law, Part 1 of Division 4 of the

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

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5 of the State of California, Orange County in Case No. 08CF2041,
6 Respondent was convicted of violating Penal Code Section
7 550(b)(1) (insurance fraud), a felony. Respondent was sentenced
8 to three years probation; 30 days in jail (40 hours Cal Trans);
9 and ordered to pay fines.

10 4.

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

16 5.

17 The crime of which Respondent was convicted
18 constitutes cause under Sections 490 and 10177(b) of the Code
19 for the suspension or revocation of the license and license
20 rights of Respondent under the Real Estate Law.

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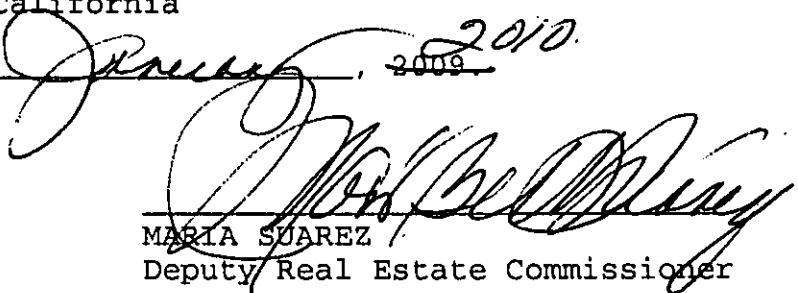
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of
5 Respondent, GREGORIO ERNESTO VARGAS, 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

10 this 13th day of January, 2010.

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13 
14 MARIA SUAREZ
15 Deputy Real Estate Commissioner
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24
25

26 cc: GREGORIO ERNESTO VARGAS
27 Edward Corey Rhodes
MARIA SUAREZ
Sacto.