

FILED
AUG - 4 2005

BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By L. Frost

* * *

In the Matter of the Application of)	
LENA M. MARSHALL,)	No. H-1775 FR
Respondent.)	2005050015

DECISION

The Proposed Decision dated July 11, 2005, 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 with the following exception:

The provision, "upon payment of any applicable fees" of the Order of the Proposed Decision is not adopted and shall not be a part of the Decision.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commission's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on August 24, 2005.

IT IS SO ORDERED 727 2005.

JEFF DAVIS
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

LENA M. MARSHALL,

Respondent.

Case No. H-1775 FRESNO

OAH No. N2005050015

PROPOSED DECISION

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on July 7, 2005.

John Van Driel, Staff Counsel, Department of Real Estate, State of California, represented Complainant John W. Sweeney, Deputy Real Estate Commissioner, State of California.

Lena M. Marshall (respondent) appeared and represented herself.

Evidence was received and the matter submitted on July 7, 2005.

FACTUAL FINDINGS

1. On March 21, 2005, complainant John W. Sweeney, Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California, filed the Statement of Issues in his official capacity against respondent.

2. On January 23, 2004, respondent made application to the Department for the issuance of a real estate salesperson license. Her application was denied. Respondent appeals.

3. In response to Question 25 of her application, respondent was asked, "Have you ever been convicted of any violation of law?" Respondent answered, "Yes." Asked to provide an explanation, she referenced an unspecified 1990 conviction in Santa Clara County, California.

4. On October 8, 1985, in the Superior Court of California, County of Santa Clara, respondent, then age 29, was convicted of felony violations of Welfare and Institutions Code

section 11483 (welfare fraud), Penal Code section 396 (food stamp fraud), and Penal Code section 475 (possession of forged instrument), and a misdemeanor violation of Penal Code section 475. Each is a crime of moral turpitude substantially related to the qualifications, functions or duties of a real estate licensee. Respondent was placed on probation for a period of three years. Failing to effect restitution within the probation period, her probation was revoked and, on December 20, 1990, extended to December 21, 1991.

5. Respondent, age 49, does not excuse or diminish her convictions. She relates that in completing her application, she was wholly unaware of the code sections or dates specific to her convictions. Aware however that candor was required, she provided as much information surrounding her convictions as she recalled. Remembering that something related to her convictions occurred in 1990, she dutifully reported that event; however, the evidence set forth that respondent suffered multiple convictions on a single date in October 1985, that encompassed a course of conduct that respondent has long put behind her.

6. With respect to the conduct underlying her convictions, respondent candidly related that she was a single mother of two children, then ages six and eight. She received no support from their father. While she worked, it was difficult meeting their and her needs. While she acknowledges that, in retrospect, she could have undertaken still another job, she failed to report earned income in her monthly submissions to the Santa Clara Welfare Department. Her convictions relating to forged instruments arose when she failed to properly safeguard her employer's checks, resulting in another employee obtaining possession and uttering the checks.

Circumstances in Aggravation

7. Respondent has engaged in multiple acts involving moral turpitude.

Circumstances in Mitigation

8. Respondent, as a result of her convictions, demonstrates particular self-awareness.

9. Respondent's misconduct occurred more than 20 years ago. Married for over 15 years, she completed her restitution, maintained gainful employment, and raised her children and step-children to be responsible adults. Having worked for a certified public accountant, she subsequently undertook employment with a real estate office and discovered that she enjoyed the pace, professionalism, and excitement surrounding real estate. She seeks licensure to expand her and her family's finances and pursue a profession in keeping with her personality.

10. Respondent presented evidence in the form of a witness, her husband, and letters that assert her reputation for integrity.

11. Respondent successfully completed her Superior Court probation.

12. Respondent was both candid and cooperative in this proceeding.

13. Respondent is involved in her family, her church, and community activities in the Los Banos, California, area. She has the clear and abiding love and devotion of her husband.

14. Respondent, recognizing that she made poor choices more than two decades ago, expressed and displayed sincere remorse.

LEGAL CONCLUSIONS

1. Cause exists to deny the application of respondent for licensure as a real estate salesperson for criminal convictions substantially related to the qualifications, functions or duties of a Department licensee pursuant to the provisions of Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), in conjunction with California Code of Regulations, title 10, section 2910, and as set forth in Findings 2 through 6, inclusive.

2. A fundamental objective of the Department is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in the Department's licensure process.¹

Against this backdrop, the law looks with favor on one who is reformed. Respondent has clearly presented rehabilitation worthy of salutary consideration. Accordingly, mindful of the conduct underlying the Accusation (Legal Conclusion 1) and the circumstances in aggravation (Finding 7) and mitigation (Findings 8 through 14); the public interest will not be adversely affected by the issuance of a properly conditioned real estate salesperson's license to respondent

ORDER

Respondent Lena M. Marshall's application for a real estate salesperson license is denied; provided, however, upon payment of any applicable fees, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

¹ *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

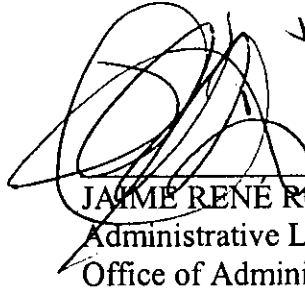
1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
 - (a) The conviction of respondent (including a plea of nolo contendere or admission or determination of a violation of court probation) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or
 - (b) The receipt of evidence 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.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license.
3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by any prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:
 - (a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and
 - (b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.
4. 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 suspension of respondent's license until respondent passes the examination.
5. Respondent's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Business and Professions Code section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced

real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension. Pursuant to Business and Professions Code section 10154, if respondent has not satisfied the requirements for an unqualified license under Section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

6. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in respondent's custody and control and periodic summaries of salient information concerning each real estate transaction in which he engaged during the period covered by the report.

Dated: _____

7-11-05



JAIMÉ RENÉ ROMÁN

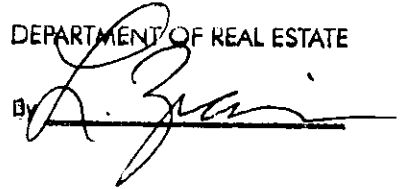
Administrative Law Judge

Office of Administrative Hearings

1 JOHN VAN DRIEL, Counsel (SBN 84056)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 -or- (916) 227-0787 (Direct)

FILED
APR 14 2005

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 LENA M. MARSHALL,) No.. H-1775 FRESNO
13 Respondent.) STATEMENT OF ISSUES

14
15 The Complainant, John W. Sweeney, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against LENA M. MARSHALL aka LENA MAE HADNOT (hereinafter
18 "Respondent"), is informed and alleges as follows:

19 I

20 Complainant, John W. Sweeney, a Deputy Real Estate
21 Commissioner of the State of California, makes this Statement of
22 Issues in his official capacity and not otherwise.

23 II

24 Respondent made application to the Department of Real
25 Estate of the State of California for a real estate salesperson
26 license on or about January 23, 2004 with the knowledge and
27 understanding that any license issued as a result of said

1 application should be subject to the conditions of Section
2 10153.4 of the Business & Professions Code.

3 III

4 In response to Question 25 of said application, to
5 wit: "Have you ever been convicted of any violation of law?",
6 Respondent answered "Yes", and disclosed an unspecified 1990
7 conviction in Santa Clara County.

8 IV

9 On or about October 8, 1985, in the Santa Clara County
10 Superior Court, Respondent was convicted of two violations of
11 Section 475 of the California Penal Code (Possession of Forged
12 Instrument), a crime involving moral turpitude and which bears a
13 substantial relationship under Section 2910, Title 10,
14 California Code of Regulations, to the qualifications,
15 functions, or duties of a real estate licensee.

16 V

17 On or about October 8, 1985, in the Santa Clara County
18 Superior Court, Respondent was also convicted of a violation of
19 Section 11483(2) of the California Welfare & Institutions Code
20 (Obtaining Aid by Fraud), and a violation of Section 396 of the
21 California Penal Code (Food Stamp Fraud), crimes involving moral
22 turpitude and which bear a substantial relationship under
23 Section 2910, Title 10, California Code of Regulations, to the
24 qualifications, functions, or duties of a real estate licensee.

25 ///

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27


VI

The crimes of which Respondent was convicted, as alleged above, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

VII

Respondent's failure to reveal the convictions set forth above in said application constitutes the procurement of a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which failure is cause for denial of Respondent's application for a real estate license under Sections 480(c) and 10177(a) of the California Business and Professions Code.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, and for such other and further relief as may be proper under other provisions of law.


JOHN W. SWEENEY
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 21st day of March, 2005.