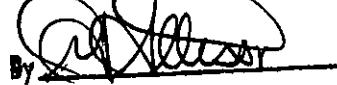


FILED

FEB 15 2011

DEPARTMENT OF REAL ESTATE

By 

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

MAGDALENA SALAS,

Respondent.

No. H-3966 SAC

ORDER DENYING REINSTATEMENT OF LICENSE

On August 16, 2004, a Decision was rendered in Case No. H-3966 SAC revoking the real estate salesperson license of Respondent effective September 8, 2004.

On June 26, 2008, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

I have considered the petition of Respondent and the evidence submitted in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has

1 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate
2 salesperson license at this time.

3 The Department has developed criteria in Section 2911 of Title 10, California
4 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
5 reinstatement of a license. Among the criteria relevant in this proceeding are:

6 Regulation 2911(j) Discharge of, or bona fide efforts toward discharging,
7 adjudicated debts or monetary obligations to others.

8 The Department's investigation revealed that, since the revocation of
9 Respondent's real estate license in 2004, she has suffered more than twenty judgment liens,
10 including a county tax lien for more than \$191,000. Respondent has provided no evidence that
11 any of those liens have been satisfied.

12 Regulation 2911(k) Correction of business practices resulting in injury to others
13 or with the potential to cause such injury.

14 In August 2010, the Department issued a Desist and Refrain Order against
15 Respondent for doing acts requiring a real estate license while Respondent did not hold any real
16 estate license.

17 Given the violations found and the fact that Respondent has not established that
18 Respondent has satisfied Regulations 2911(j) and (k), I am not satisfied that Respondent is
19 sufficiently rehabilitated to receive a real estate salesperson license.

20 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
21 reinstatement of Respondent's real estate salesperson license is denied.

22 This Order shall become effective at 12 o'clock noon on

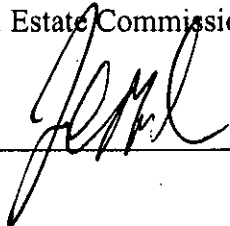
MAR - 8 2011

23 IT IS SO ORDERED

2-1-2011

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JEFF DAVI
Real Estate Commissioner



FILED
AUG 19 2004

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

* * *

In the Matter of the Accusation of)
MAGDALENA SALAS,)
Respondent.)
_____)

NO. H-3966 SAC
OAH NO. N-2004040691

DECISION

The Proposed Decision dated July 23, 2004, 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 September 8, 2004.

IT IS SO ORDERED August 16, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MAGDALENA SALAS

Petitioner.

Case No. H-3966 SAC

OAH No. N2004040691

PROPOSED DECISION

On July 2, 2004, in Sacramento, California, Leonard L. Scott, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Diedre L. Johnson, Counsel, represented complainant.

Michael F. Babitzke, Attorney at Law, represented respondent Magdalena Salas.

Evidence was received, the record was closed and the matter was submitted.

FACTUAL FINDINGS

1. Charles W. Koenig (Koenig), Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California, filed the Accusation against respondent. Koenig acted in his official capacity.

2. Respondent is licensed as a Real Estate Salesperson in the State of California with license number 012789071. The license was issued on May 24, 2000. It was in full force and effect at all times relevant to this matter.

3. On or about September 18, 2001, in the Superior Court, County of San Joaquin, State of California, in the matter entitled *People v. Magdalena Salas*, case number SM216928A, respondent was convicted, on her plea of nolo contendere, of a violation of Penal Code section 484, subdivision (a), petty theft, a misdemeanor and a crime involving moral turpitude. Respondent's crime is substantially related to the qualifications, functions and duties of the licensed activity pursuant to the criteria enumerated in California Code of Regulations, title 10, section 2910. Imposition of sentence was suspended and respondent

was placed on probation for three years with various terms and conditions, including making restitution. Respondent is still on probation but has paid the fines, fees and restitution.

The facts and circumstances of the offense are that respondent was convicted for stealing a computer from her then employer, a real estate mortgage broker, on or about January 3, 2001. On or about December 28, 2000, respondent and her employer, Eric Fowler (Fowler) of Fowler Mortgage, had an angry argument and respondent called the police. She charged that he had threatened her. Then during the night on January 3, 2001, she went into the firm's office and removed her personal property, plus 17 files belonging to the company and the computer. Fowler reported the theft to the police the next morning.

When the police contacted respondent about the property, she claimed that she had purchased the computer from Fowler and had a receipt for that purchase. She told the police that she would bring in the receipt and show it to them; but, after getting an attorney, she refused to speak to them further and did not show them a receipt or any other evidence showing she had purchased the computer. After she was charged with misdemeanor theft, rather than offer any evidence of ownership of the computer to the court, she pleaded nolo contendere to misdemeanor theft.

Although she did not provide it to the police or the criminal court, she offered into evidence during this hearing a "commission sheet" that allegedly shows payment for a computer. In spite of her testimony regarding its authenticity, it was given little credence because, if it existed at the time of the criminal proceedings, it would have helped establish her claim to the computer and she did not then offer it.

4. As a matter in aggravation, on or about February 7, 2000, in the Superior Court, County of San Joaquin, State of California, in the matter entitled *People v. Magdalena Salas aka Magdalena Martinez*, case number SM2109346, respondent was convicted, on her plea, of a violation of Vehicle Code sections 23152, subdivision (a), driving under the influence (DUI), and 20002, subdivision (a), hit and run, misdemeanors. Hit and run is a crime involving moral turpitude. Respondent's crimes are substantially related to the qualifications, functions and duties of the licensed activity pursuant to the criteria enumerated in California Code of Regulations, title 10, section 2910. Imposition of sentence was suspended and respondent was placed on probation for three years with various terms and conditions, including paying restitution. Respondent has not completed the court ordered DUI school and, although she says she complied with all of the other terms and conditions of probation, she does not have any documentation to show she has been released from probation or has paid the fines, fees and restitution.

The facts and circumstances of these offenses are that on or about January 5, 2000, respondent was driving a car while intoxicated, with her small child in the car. She hit some parked cars and fled the scene on foot with her small child in tow.

5. Respondent is 35 years of age, a high school graduate and works to support herself and her two sons. She is married but separated from her husband; he is unemployed and does not contribute to their support.

Respondent testified that she was sober for 7 years before the DUI in January of 2000, but relapsed and drove after drinking. She said she has been sober since the DUI and attended Alcoholics Anonymous (AA) prior to and since the DUI. Although she said she attended AA for about 11 years; she admitted she does not have a sponsor and has only informally worked at some of the 12 steps. She had no documentation of her attendance at AA.

Respondent said she attends church about twice a month on Sundays and is a member of the Mexican-American Chamber of Commerce. She said she recently became a member of the Board of Senior Advocacy, which helps the elderly and delivers meals on wheels. Respondent expressed remorse for her driving under the influence.

6. Respondent provided hearsay letters of support from acquaintances in the real estate industry.

7. Although respondent has apparently made some efforts to rehabilitate herself since her crimes, she is still on probation for her conviction for petty theft from her employer, a crime directly related to her licensed activity. That crime occurred while she was on probation for her two previous crimes of DUI and hit and run.

LEGAL CONCLUSIONS

1. Respondent's crime of petty theft is substantially related to the licensed activity pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), an unlawful act that conferred an economic benefit on respondent.

2. Respondent's crimes of driving under the influence and hit and run are substantially related to the licensed activity pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(8), an unlawful act that does substantial injury to the property of another and subdivision (a)(10), conduct demonstrating a pattern of repeated and willful disregard of law.

3. Respondent provided some evidence, much of it oral and without any substantiation, of her efforts to rehabilitate herself pursuant to California Code of Regulations, title 10, section 2912, subdivisions: (a) the passage of at least two years since the criminal act; (f) abstinence from the use of alcohol for not less than two years; (j) fulfillment of parental responsibilities but not a stable family life; and (l) some involvement in programs designed to provide social benefits.

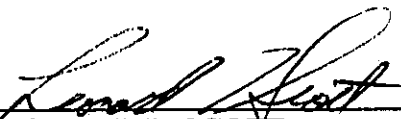
4. Cause for discipline of respondent's Real Estate Salesperson's license was established for violation of Business and Professions Code sections 490 and 10177, subdivision (b), as found in Finding 3. There was insufficient evidence pursuant to Section 2912 to significantly affect the appropriate license discipline.

ORDER

All Real Estate licenses and licensing rights of respondent Magdalena Salas, including Real Estate Salesperson's License Number 01278971, are revoked pursuant to Legal Conclusion number 4.

Dated:

July 23, 2004


LEONARD L. SCOTT
Administrative Law Judge
Office of Administrative Hearings

FILED
MAY 18 2004

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

DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Accusation of

MAGDALENA SALAS,

}
}

Case No. H-3966 SAC

OAH No. 2004040691

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at

THE OFFICE OF ADMINISTRATIVE HEARINGS

560 J STREET, SUITES 340/360

SACRAMENTO, CALIFORNIA 95814

on **JULY 2, 2004**, at the hour of **10:30 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.


You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: MAY 18, 2004

By 
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel
2 SBN 66322
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0789

FILED
FEB 26 2004

DEPARTMENT OF REAL ESTATE

By Kathleen Conteras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 MAGDALENA SALAS,)
14)
Respondent.)

NO. H-3966 SAC
ACCUSATION

15 The Complainant, CHARLES W. KOENIG, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against MAGDALENA SALAS, is informed and alleges as follows:

18 I

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

23 II

24 The Complainant, CHARLES W. KOENIG, a Deputy Real
25 Estate Commissioner of the State of California, makes this
26 Accusation against Respondent in his official capacity and not
27 otherwise.

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III

On or about September 18, 2001, in the Superior Court of the State of California, County of San Joaquin, Respondent was convicted of violation of California Penal Code Section 484(a) (PETTY THEFT), a misdemeanor, a crime involving moral turpitude, and/or a crime which bears a substantial relationship under Section 2910 of Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

The facts alleged above constitute cause under Sections 490 and 10177(b) of the Code for suspension or revocation of all license(s) and license rights of Respondent under the Real Estate Law.

MATTERS IN AGGRAVATION


V

On or about February 7, 2000, in the Superior Court of the State of California, County of San Joaquin, in Case No. 210934B, Respondent was convicted of violation of California Vehicle Code Section 23152(a) (DRIVING UNDER THE INFLUENCE), and Vehicle Code Section 20002(a) (HIT AND RUN), misdemeanors, crimes involving moral turpitude, and/or crimes which bear a substantial relationship under Section 2910 of Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

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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 license(s) and license rights of Respondent 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 provisions of law.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 17th day of February, 2004.