

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUL 14 2005

DEPARTMENT OF REAL ESTATE

* * *

By K. Contreras

In the Matter of the Application of)
)
)
 CLAUDETTE MARIE MEDEIROS,)
)
)
 Respondent.)
_____)

NO. H-4208 SAC

N-205030089

DECISION

The Proposed Decision dated June 17, 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:

Condition "3" of the Order of the Proposed Decision is not adopted and shall not be 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 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 Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon on August 3, 2005.

IT IS SO ORDERED 7-12-, 2005.

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

CLAUDETTE MARIE MEDEIROS,

Respondent.

Case No. H-4208 SAC

OAH No. N 2005030089

PROPOSED DECISION

On May 9, 2005, in Sacramento, California, Denny R. Davis, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Deidre L. Johnson, Department of Real Estate Counsel, represented the complainant.

Sean J. Geddes, Attorney, represented respondent. Respondent's name is Claudette Marie Medeiros, aka: Claudette Marie Snelling, and Claudette Rebeiro.

Evidence was received; the record was closed and the matter was submitted on May 9, 2005.

STIPULATION

The parties agreed to strike paragraphs III and VIII from the Statement of Issues.

FACTUAL FINDINGS

1. Complainant, Charles W. Koenig, Deputy Real Estate Commissioner of the State of California, filed the Statement of Issues against respondent in his official capacity only and not otherwise.

2. On March 26, 1986, in the Municipal Court of The State of California, County of San Joaquin, respondent, whose name at that time was Claudette Maria Snelling, was convicted of violating California Penal Code section 484(a), (petty theft), a misdemeanor. She was sentenced to five days in jail. In lieu of jail she accepted the court's

recommendation of serving on a work project. She was fined \$50.00 and placed on one year probation. Respondent paid her fines and satisfied all terms of her probation.

3. On March 8, 1995, in the Municipal Court of The State of California, County of San Joaquin, respondent (Claudette Maria Snelling) was convicted of violating California Penal Code section 484(a), (petty theft) a misdemeanor. She was sentenced to 20 days in jail. She received credit for time served of five days. She was fined and ordered to pay restitution. She was placed on three years probation. Respondent paid her fines and restitution and she satisfied all terms of her probation.

4. On April 19, 1995, in the Municipal Court of The State of California, County of San Joaquin, respondent (Claudette Maria Snelling) was convicted of violating California Penal Code section 415, (an infraction). She was sentenced to 5 days in jail. She received credit for time served of five days and she was fined.

5. On July 5, 1995, respondent was convicted in the Municipal Court of The State of California, County of San Joaquin, for violating California Penal Code section 148 (a), (resisting / obstructing a peace officer) a misdemeanor. She was sentenced to 30 days in jail. She was given credit for time served of one day. She was fined, which has been paid. She was placed on three years probation. Respondent satisfied all terms of her probation.

6 On February 10, 2004, respondent petitioned the Superior Court of California, County of San Joaquin, under Penal Code section 1203.4, for the dismissal of her March 26, 1986, conviction for violating Penal Code section 484, and her July 5, 1995, conviction for violating California Penal Code section 148, and she also petitioned the court for the dismissal of her March 8, 1995, conviction for violating California Penal Code section 484(a). Her petitions were granted.

7. Respondent's evidence of mitigation and rehabilitation was weighed and considered. Respondent is 46 years of age. It has been ten years since her last conviction. She asserts that in the intervening years she grew up. She has satisfied all court orders including probation. She petitioned the court to dismiss three convictions pursuant to Penal Code section 1203.4. All three petitions were granted. She started attending church and attended church meetings for alcohol dependent persons with her father. She returned to her faith. She started teaching Sunday school. This experience and her closeness to her family turned her around and gave her a new sense of self-worth. She was married five years ago to her present husband. He is licensed by the DMV as a vehicle salesperson. He has been employed by Tracy Auto Sales for 16 years. He attended the present hearing on her behalf and he testified. He has known respondent for ten years. He has never seen her use drugs. He has not seen her intoxicated since 1994 or 1995. Both respondent and her husband have stopped drinking to the point of intoxication. On rare occasions they have one glass of wine. He confirmed that she is devoted to her children and to her religion. He is a loving and supportive husband and he believes his wife is an honest and responsible person.

8. Respondent's daughter, Erica Saenz, testified on her behalf. She is 27 years of age. She was licensed as a real estate salesperson in February 2004. She never saw her mother intoxicated or under the influence of drugs. She and her mother are very close and there exists a loving relationship between them. They hope to work together selling real estate when respondent is licensed. Ms. Saenz's broker wishes to hire respondent when she is licensed.

9. Respondent's daughter, Eva Snelling, testified on her behalf. She is 24 years of age. She is a business owner along with her sister, Erica Saenz. They own and operate a physical fitness gym. She never saw her mother intoxicated or under the influence of drugs. She and her mother are very close and there exists a loving relationship between them. She believes her mother is honest and responsible and that she should be licensed to sell real estate.

10. Respondent's son, Joseph Snelling, testified on her behalf. He is 23 years of age. He is employed as a finance manager at a vehicle sales dealership. He never saw his mother intoxicated or under the influence of drugs. He and his mother are very close and there exists a loving relationship between them. Respondent has four children. Their ages are 27, 25, 23, and 15. She sees her children often. Respondent's family is close, loving and supportive. With her children, she and her husband have created a stable, productive and close family.

11. Respondent is a licensed cosmetologist. A friend of six years, Erlinda Zelaya, testified on respondent's behalf. Ms. Zelaya is a licensed cosmetologist. She trusts respondent and has never known respondent to use drugs or alcohol. She asserts that respondent is responsible and honest in her business dealings. Respondent's cosmetology license has never been disciplined.

12. Numerous letters were submitted in evidence on behalf of respondent. All commend respondent for the quality of her values, work ethic, trustworthiness, and honesty. She enjoys a good reputation among people who have known her from a few months to her entire life.

13. Real estate salespersons occupy a unique position of trust and responsibility in their management of real and personal property belonging to clients. Salespersons trustworthiness must be unassailable. Although respondent's criminal convictions were for serious misconduct, the changes she has made in her life, stabilizing changes, compel the conclusion that she warrants a consideration of licensure. Respondent has persuasively demonstrated that she is rehabilitated such that she can be licensed at the present time without risk of harm to the public provided such licensure is under terms and conditions, which include monitoring by the Board.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b) provides:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

...

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

...

2. Business and Professions Code section 480, subdivision (a) (1) provides:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

...

3. Cause exists to deny the issuance of a real estate salesperson's license to respondent under Business and Professions Code section 10177, subdivision (b) and 480, subdivision (a)(1). Respondent was convicted of violating Penal Code sections 484, 484, and 148. All criminal violations involve moral turpitude. However, moral turpitude requires a

determination that the crimes committed be substantially related to the qualifications, functions and duties of a real estate salesperson as set forth in Business and Professions Code section 480 and Title 10, California Code of Regulations section 2910.

4. Business and Professions Code section 480, subdivision (a) (3) provides:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

...

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

...

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

5. Title 10, California Code of Regulations section 2910, subdivisions (a) (10), (b), and (c) provide:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

...

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

...

(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the

weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

6. Respondent's offense of petty theft was not a single, isolated occurrence of that type of conduct. She was convicted of Penal Code section 484(a) on two occasions establishing a pattern of conduct. The provisions under section 2910, subdivision (a) (10), requiring the showing of a pattern of repeated and willful disregard for the law, is shown to exist. In this case respondent's criminal conduct did, as a matter of law, involve moral turpitude, within the meaning of *Morrison v. State Board O Education*. Cause exists to deny the issuance of a real estate salesperson's license to respondent under Title 10, California Code of Regulations section 2910, subdivision (a) (10).

7. Trustworthiness and honesty or the absence there of are substantially related to the qualifications, functions and duties of a real estate salesperson. The nature of the conduct for which respondent was convicted, petty theft, reflects on her trustworthiness and honesty. These characteristics are deemed essential to be licensed as a real estate salesperson. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402. "If (the) offenses reflect unfavorably on his honesty, it may be said that he lacks the necessary qualifications to become a real estate salesperson." *Harrington*, supra, p. 402. "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." *Id.*, *Ring V. Smith* (1970) 5 Cal.App.3d 197, 205.

8. Moral turpitude requires a determination that the conduct or offense be substantially related to the qualifications, functions and duties of a real estate salesperson. Respondent's criminal conduct involved theft. "Whether an offense involves moral turpitude is a question of law. (*Yakov v. Board of Medical Examiners* (1968, 68 Cal.2d 67, 74.). Since the California Supreme Court's decision in *Morrison v. State Board of Education* (1955) 1 Cal.3d 214, "moral turpitude" must be interpreted to mean that the conduct is substantially related to fitness to engage in the particular occupation involved. Thus, since *Morrison*, moral turpitude requires a determination that the offense is substantially related to the qualifications, functions and duties of a real estate salesperson, the very same legal conclusion required by Business and Professions Code section 490. Moreover, the general provisions of the Business and Professions Code prevail over Business and Professions Code section 10177, subdivision (b), so all convictions, including those that are either felonies or involve moral turpitude, must also be substantially related to fitness to engage in the real estate profession. (*Pieri V. Fox* (1979) 96 Cal.App.3d 802, pp. 804-807.)." Respondent's criminal conduct did, as a matter of law, involve moral turpitude.

9. Cause exists to deny the issuance of a real estate salesperson's license to respondent under Business and Professions Code sections 10177, subdivision (b) and 480, subdivision (a)(1). Respondent's criminal violations are substantially related to the qualifications, functions and duties of a real estate salesperson therefore they involve moral turpitude as a matter of law as set forth in Business and Professions Code section 480,

subdivision (a) (3) and Title 10, California Code of Regulations section 2910, subdivisions (a) (10), (b), and (c).

ORDER

The application of Claudette Marie Medeiros, for the issuance of a real estate salesperson's license is denied; provided, however, a restricted real estate salesperson's license shall be issued to respondent pursuant to section 10156.5, of the Business and Professions Code. The restricted license issued to the 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 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:

a. The conviction of respondent (including a plea of nolo contendere) 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 three years have elapsed from the date of issuance of the restricted license to respondent.

Not adopted }

3. Respondent shall report quarterly, in writing, to the Department of Real Estate about her fitness to represent the real estate profession.

4. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the 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.

5. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, 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 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.

6. Pursuant to 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.

Dated: June 17, 2005


DENNY R. DAVIS
Administrative Law Judge
Office of Administrative Hearings

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FILED
JAN 28 2005

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12) NO. H-4208 SAC
13 ' CLAUDETTE MARIE MEDEIROS,)
14 ' Respondent.) STATEMENT OF ISSUES

15 The Complainant, CHARLES W. KOENIG, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Statement of Issues against CLAUDETTE MARIE MEDEIROS, alleges as
18 follows:

19 I

20 CLAUDETTE MARIE MEDEIROS (hereafter Respondent),
21 pursuant to the provisions of Section 10153.3 of the Business
22 and Professions Code, made application to the Department of Real
23 Estate of the State of California (hereafter the Department) for
24 a real estate salesperson license on or about April 12, 2004,
25 with the knowledge and understanding that any license issued as a
26 result of said application would be subject to the conditions of
27 Section 10153.4 of the Business and Professions Code.

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II

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

In response to Question 24A of said application, to wit, "Have you ever had a denied, suspended, restricted, or revoked business or professional license (including real estate) in California or any other state?", Respondent answered "Yes," and disclosed a denial of a California auto sales license. Respondent failed to disclose the California real estate license denial alleged in Paragraph VII below.

IV

On or about March 26, 1986, in the Municipal Court of the State of California, County of San Joaquin, Respondent was convicted of a violation of California Penal Code Section 484 (PETTY THEFT), a crime involving moral turpitude, and/or a crime which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

V

On or about March 8, 1995, in the Municipal Court of the State of California, County of San Joaquin, Respondent was convicted of a violation of California Penal Code Section 484(a) (PETTY THEFT), a crime involving moral turpitude, and/or a crime which bears a substantial relationship under Section 2910,

1 Title 10, California Code of Regulations, to the qualifications,
2 functions, or duties of a real estate licensee.

3 VI

4 On or about July 5, 1995, in the Municipal Court of
5 the State of California, County of San Joaquin, Respondent was
6 convicted of a violation of California Penal Code Section 148
7 (RESISTING, DELAYING, OR OBSTRUCTING PUBLIC OFFICER), a crime
8 involving moral turpitude, and/or a crime which bears a substantial
9 relationship under Section 2910, Title 10, California Code of
10 Regulations, to the qualifications, functions, or duties of a
11 real estate licensee.

12 VII

13 Effective on or about January 9, 2003, in Case No.
14 H-3705 SF, OAH Case No. N-2002090238, before the State of
15 California Department of Real Estate, the real estate salesperson
16 license application of Respondent of August 29, 2001, was denied
17 pursuant to Sections 480(a) and 10177(b) of the Code. The grounds
18 for denial were based on acts that, if done by a real estate
19 licensee, would be grounds for the suspension or revocation of a
20 California real estate license.

21 VIII

22 The crimes of which Respondent was convicted as alleged
23 in Paragraphs IV, V, and VI above constitute cause, jointly and
24 severally, for denial of Respondent's application for a real
25 estate license under Sections 480(a) and 10177(b) of the
26 California Business and Professions Code.

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IX

Respondent's failure in said application to reveal the prior license denial set forth in Paragraph VII above constitutes the attempt to procure a real estate license by fraud, misrepresentation, or deceit; and/or by making a material misstatement of fact; and/or by knowingly making a false statement of fact in said application, which is cause for denial of Respondent's application for a real estate license under Sections 480(c) and/or 10177(a) of the 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 in the premises.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 12th day of January, 2005.