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FILED

OCT 27 2009

DEPARTMENT OF REAL ESTATE

By K. Max

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of )  
 )  
JEAN LUDWICK, )  
 )  
Respondent. )  
\_\_\_\_\_ )

CASE NO. H-5225 SAC

OAH NO. 2009070039

DECISION

The Proposed Decision dated September 14, 2009, 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.

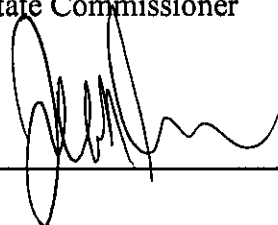
The application for a real estate broker license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon on

NOV 17 2009

IT IS SO ORDERED 10/27/09

JEFF DAVI  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

JEAN LUDWICK,

Respondent.

Case No. H-5225 SAC

OAH No. 2009070039

**PROPOSED DECISION**

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 4, 2009, in Sacramento, California.

Richard K. Uno, Counsel and Dillon Keifer, Legal Intern, represented complainant Joe M. Carrillo, a Deputy Real Estate Commissioner with the Department of Real Estate (department).

Jean Ludwick (respondent) appeared on her own behalf.

Evidence was received, the record was closed and the matter was submitted on September 4, 2009.

**FACTUAL FINDINGS**

1. On May 5, 2008, respondent applied for a real estate broker's license.
2. On June 15, 2009, complainant filed the Statement of Issues in his official capacity. Complainant seeks to deny respondent's application based upon a criminal conviction, and based upon her failure to disclose that conviction in her application. At hearing, complainant amended the Statement of Issues as follows: on page 1, line 25: "Question 25" was amended to read "Part D, Questions 1 and 5." Respondent did not object to this amendment.
3. Respondent timely filed a Notice of Defense to the Statement of Issues, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an

independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

*Respondent's Conviction*

4. On November 13, 2006, in the Placer County Superior Court, in the matter entitled *People of the State of California v. Jean Ludwick* (Case No. 72-4080), respondent, upon a plea of nolo contendere, was convicted of violating Vehicle Code section 23103/23103.5, reckless driving, a misdemeanor. Respondent was sentenced to serve two days in jail; placed on three years conditional probation; and ordered to enroll in and complete a three-month First Offender Program and pay a \$145 fine. Her probation is scheduled to end on November 13, 2009.

5. Respondent's conviction arose from her conduct on September 9, 2006 when she had dinner with clients "after a very stressful escrow." Respondent consumed wine and port at the dinner, left the café, and reviewed her emails while driving home. Respondent was pulled over by a State Park Peace Officer for driving over center double yellow lines.

*Respondent's Application*

6. Question 1 in Part D of respondent's application asks: "HAVE YOU EVER BEEN CONVICTED OF A MISDEMEANOR OR FELONY? **CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY. IF YES, COMPLETE ITEM 5.**" (Capitalization and bolding in original.) Respondent checked the box "NO" in response to Question 1, and left Item 5 blank. Respondent did not disclose the conviction described in Factual Finding 4. Respondent signed the application on April 17, 2008, thereby certifying under penalty of perjury under the laws of the State of California that the responses in the application were true and correct.

7. In a Confidential – Interview Information Statement and Conviction Detail Report received by the department on March 18, 2009, respondent apologized and stated that she did not disclose on her application the conviction described in Factual Finding 4 because she "blocked it from memory."

8. At hearing, respondent asserted that she made a mistake on her application and did not disclose her conviction because it was a bad experience so she blocked it out of her mind. Respondent's testimony was not credible. It is found that respondent was aware of her conviction when she filled out her application. By failing to disclose her conviction on her application, respondent knowingly made an omission of a fact that she was required to reveal.

## *Factors in Aggravation, Mitigation and Rehabilitation*

9. Respondent is 70 years old. Subsequent to her conviction, she attended the First Offender Progrām where she “heard sad stories” and learned “that you never want to have that happen again.” Respondent is unaware if she is still on probation for her conviction. She testified at hearing that she is not a fraud and made an honest mistake on her application.

10. Respondent submitted three letters of recommendation from her co-workers and one letter of support from her daughter, which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).<sup>1</sup> Pamela Hurt-Hobday has worked with respondent for five years on community philanthropic projects. She describes respondent as a focused and “outstanding active listener” who has a “tremendous sense of commitment.” Katrine “Trinkie” Watson has known respondent for three years and describes her as “well respected and well liked by her peers,” and “an exemplary member of our real estate and local community.” Valerie Forte has known respondent for 30 years and describes her as “clear, direct, ethical and fair,” and “loyal, and dedicated to her career and reputation.” Respondent’s daughter, Amy Casey, describes her as caring and compassionate. Three of these letters were unsigned, and none of the letters makes any reference to respondent’s conviction.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that a license may be denied if an applicant has been convicted of a crime that is “substantially related to the qualifications, functions, or duties of the business or profession for which application is made.”

2. Business and Professions Code section 10177, subdivision (b), provides that an application for a real estate license may be denied if the applicant has “entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee ....”

3. In California Code of Regulations, title 10, section 2910, subdivision (a), the department has set forth criteria for determining whether a conviction is substantially related

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<sup>1</sup> Government Code section 11513, subdivision (d), provides that “[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions ....”

to the qualifications, functions or duties of a real estate licensee. These criteria include the following:

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

[¶] ... [¶]

4. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), respondent's conviction for reckless driving (Factual Finding 4) is substantially related to the qualifications, functions and duties of a real estate licensee because it posed a threat of substantial injury to the person or property of another. Accordingly, respondent's conviction is substantially related to the qualifications, functions and duties of a real estate broker and establishes cause to deny her application under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

5. Pursuant to Business and Professions Code section 480, subdivision (c), an application for a license may be denied if the applicant has "knowingly made a false statement of fact required to be revealed in the application for the license." Pursuant to Business and Professions Code section 10177, subdivision (a), an application for a real estate license may be denied if the applicant has "attempted to procure" a real estate license "by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license ...." Respondent's failure to disclose her conviction on her application establishes cause to deny her application for a real estate broker license under Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a).

#### *Fitness for Licensure*

6. In California Code of Regulations, title 10, section 2911, the department has set forth the criteria for rehabilitation that it reviews when determining whether an applicant who has been convicted of a crime should be issued a real estate license.<sup>2</sup>

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<sup>2</sup> California Code of Regulations, title 10, section 2911 provides:

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

7. Respondent has complied with few of the rehabilitation criteria set forth in California Code of Regulations, title 10, section 2911. Although it has been almost three years since respondent's conviction, she will be on probation until November 13, 2009. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 ["Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole."].) Respondent did not submit evidence to establish that she has a stable family life and is fulfilling her parental and familial

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(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinance from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

(i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

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

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

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

responsibilities, and did not show that she has significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or ameliorate social problems. While respondent professed to have learned from her experience, she did not submit any evidence from family members, friends or other persons familiar with her criminal conduct and her subsequent attitudes and behavioral patterns.


More importantly, respondent did not fully disclose on her application her conviction. Real estate brokers are expected to act with honesty and integrity toward their clients, the public and the department. They are required to conduct due diligence and fully disclose all matters that legally must be disclosed. The public and the department rely upon real estate brokers to make disclosures that are complete and accurate. By failing to disclose her conviction on her application, respondent failed to conduct the necessary due diligence and make the required disclosures. Respondent's failure to fully disclose her criminal record was material and serious.

In light of respondent's criminal conviction, her failure to disclose that conviction on her application, and the absence of sufficient evidence of rehabilitation (Factual Finding 9), it would not be consistent with the public interest, safety and welfare to grant respondent a real estate broker license at this time, even on a restricted basis.

#### ORDER

The application of respondent Jean Ludwick for the issuance of a real estate broker's license is DENIED.

DATED: September 14, 2009

  
REBECCA M. WESTMORE  
Administrative Law Judge  
Office of Administrative Hearings

1 RICHARD K. UNO, Counsel (SBN 98275)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007  
5 Telephone: (916) 227-2380

FILED

JUN 18 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 JEAN LUDWICK, ) H-5225 SAC  
13 Respondent. ) STATEMENT OF ISSUES  
14 )

15 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner  
16 of the State of California, for Statement-of Issues against JEAN LUDWICK, (Respondent), is  
17 informed and alleges as follows:

18 1

19 Complainant makes this Statement of Issues against Respondent in his official  
20 capacity.

21 2

22 Respondent made application to the Department of Real Estate of the State of  
23 California for a real estate broker license on or about May 5, 2008.

24 3

25 In response to Question 25 of said application, to wit: "Have you ever been  
26 convicted of any violation of law? Convictions expunged under Penal Code Section 1203.4  
27 must be disclosed. However, you may omit minor traffic citations which do not constitute a



1 misdemeanor or felony offense", Respondent concealed and failed to disclose the conviction  
2 described in Paragraph 4, below.

3 4

4 On or about November 13, 2006, in the Superior Court of the State of California,  
5 County of Placer, Case No. 72-4080, Respondent was convicted of violating Section  
6 23103/23103.5 of the California Vehicle Code (Wet Reckless), a misdemeanor and a crime  
7 that bears a substantial relationship under Section 2910, Title 10, Chapter 6 of the California  
8 Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

9 5

10 Respondent's criminal conviction, described in Paragraph 4, above, constitutes  
11 cause for denial of Respondent's application for a real estate broker license pursuant to the  
12 provisions of Sections 480(a) and 10177(b) of the Code.

13 6

14 Respondent's failure to reveal in said application the conviction set forth in  
15 Paragraph 4, above, constitutes the procurement of or attempt to procure a real estate license  
16 by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said  
17 application, which failure is cause for denial of Respondent's application for a real estate broker  
18 license pursuant to the provisions of Sections 480(c) and 10177(a) of the Code.

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

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24   
25 JOE M. CARRILLO  
26 Deputy Real Estate Commissioner

26 Dated at Sacramento, California,  
27 this 12 day of June, 2009.