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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By K. Contreras

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In the Matter of the Application of	)	
	)	NO. H-5378 SAC
DEWANA L. HALE,	)	
	)	N-2010050543
<u>Respondent.</u>	)	

**DECISION**

The Proposed Decision dated August 30, 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 with the following correction:

Pursuant to Section 11518.5(c) of the Government Code, the Proposed Decision is revised to read at ORDER, Page 7:

The application of respondent DEWANA LATISHA HALE, for the issuance of a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to 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:

Order, Paragraph 4, on Page 8, the first sentence shall be stricken and the paragraph shall be read to begin at, "Respondent shall submit with any application for license under any employing broker, ..."

Order, Paragraph 5, on Page 8, shall be stricken.

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

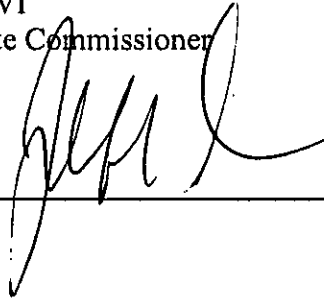
restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

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 October 21, 2010.

IT IS SO ORDERED 9/29, 2010.

JEFF DAVI  
Real Estate Commissioner



A handwritten signature in cursive script, appearing to read 'Jeff Davi', is written over a horizontal line.

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

DEWANA L. HALE,

Respondent.

Case No. H-5378 SAC

OAH No. 2010050543

**PROPOSED DECISION**

Troy K. Taira, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on July 30, 2010.

Annette E. Ferrante, Counsel, Department of Real Estate, represented the complainant.

Dewana L. Hale (respondent) appeared on her own behalf.

Evidence was received and the matter was submitted on July 30, 2010.

**FACTUAL FINDINGS**

1. Tricia D. Sommers, Deputy Real Estate Commissioner, Department of Real Estate, State of California (complainant), filed the Statement of Issues in her official capacity against respondent.

2. On or about October 23, 2008, respondent applied to the Department of Real Estate for a real estate salesperson license. Complainant requests respondent's application for a real estate salesperson license be denied based upon respondent's criminal convictions.

*Respondent's Convictions*

3. On January 14, 2009, in the Superior Court, County of Sacramento, State of California, in Case No. 08M12512, respondent was convicted of violating Penal Code section 236, False Imprisonment, a misdemeanor. In her desire for a quick resolution respondent pled no contest to the charge. Respondent was sentenced to one day in jail with credit for time already served, a \$100 fine (stayed during probation), and three years informal probation. Respondent was also required to attend 12 anger management sessions or spend

an additional six days in jail. Respondent successfully completed the anger management sessions. Respondent is on informal probation until 2012.

4. Respondent testified that she was involved in a domestic dispute in December, 2008, with her boyfriend at the time, with whom she had a three-year old daughter. During the argument, the boyfriend blocked the stairway as she was trying to walk up. She struck him, and then proceeded to block the door as he was trying to remove a computer monitor. The boyfriend called the police and respondent was arrested. Respondent acknowledged the dispute had escalated, and considered it unfortunate and out of her character. Respondent testified that she had a different recollection of the underlying events than what was in her ex-boyfriend's statement.

5. The boyfriend, in his statement to the police, said he was in the process of moving out after living with respondent for four years. The boyfriend reported to the police that while arguing with respondent she struck him in the face. As he started to call 911, respondent slapped the phone out of his hand. Respondent's mother then called him on his phone. Respondent continued to yell and slap the phone out of his hand, ultimately scratching his face and knocking the phone from his grip where it fell and broke. The police report confirmed the boyfriend had a cut above his left eyebrow, swollen left eye, and a cut on his left cheek.

6. Respondent called her mother, Callie O'Roy, notifying her of the incident. Respondent asked her mother to pick up her children so they would not see the dispute. Ms. O'Roy sent her husband to pick up the children. Ms. O'Roy testified that the boyfriend also called her, notifying her of the dispute and that he had called the police. Ms. O'Roy did not see the altercation, nor did she hear it over the phone. Ms. O'Roy stated that the children did not report anything unusual after the dispute, nor did they seem to be in distress.

7. On September 7, 1995, in the Superior Court, County of Sacramento, State of California, in Case No. 95F042229, respondent was convicted of violating Welfare and Institutions Code section 10980, Welfare Fraud by False Statement, a felony. Respondent was sentenced to 354 hours of community service (in lieu of 60 days in jail), five years informal probation, and restitution of \$5,676.37.

8. Respondent began receiving CalWorks public assistance in 1991 after the birth of her first child when she was 19 years old. Respondent was both working and taking courses in the field of accounting. Respondent reported her earnings to the county agency, which was used to determine the amount of assistance she received. Respondent realized she had been overpaid in cash and food stamps for approximately \$4,000. She notified the CalWorks office by telephone and in person, and was told that the overpayment would be flagged during an audit and she would pay the monies back at that time. Respondent offered to make payment, but the clerk assured her that the audit would catch the overpayment. In response to respondent's request, CalWorks stopped the assistance. Around 1993, respondent received a notice of overpayment from CalWorks and started making the reimbursement payments of \$50 per month. Respondent then moved to the San Francisco

Bay Area and was unable to continue payments due to the higher cost of living. Respondent unsuccessfully tried to arrange a lower payment schedule. Respondent missed payments and tried to send in \$100 when she could, but ultimately could not maintain the payment schedule.

9. Around 1995, respondent returned to Sacramento, and while applying for a job discovered she had charges pending for welfare fraud. In her desire for a quick resolution, respondent pled no contest to the criminal charges. Respondent stated she never intended to defraud since she brought the overpayment to the agency's attention and attempted to reimburse. Respondent has completed reimbursement and restitution, community service, and informal probation.

10. Respondent acknowledged to having an outstanding traffic fine for driving on a suspended license and owing a civil debt arising from a small claims action in 2006 for a payday loan. Respondent's request to expunge her 1995 conviction was denied based on the outstanding traffic case.

#### *Evidence of Rehabilitation*

11. Respondent has been residing in Antelope, California, since 2000, living most of her life in the Sacramento area. She is mother to four children, ages 18, 14, 10, and 5 years old. Her oldest child just graduated from high school. One child is attending high school, and two are attending elementary school.

12. Respondent is currently unemployed, but from August, 2008, until January, 2010, worked as the transaction coordinator for a local real estate broker. Respondent was laid off due to the declining state of the real estate market and left on good terms with her employer. Respondent's former employer is currently out of the state. From 2003 to 2007, respondent worked for a sign company providing technical support, and as an accounting coordinator. Respondent did not provide any documentation regarding her employment history. Respondent indicated that she relied on her former employer's statement that respondent did not need a letter of recommendation from her since she had already spoken with the Department of Real Estate about respondent's case.

13. Since January, 2010, after her job with the real estate broker, respondent enrolled in a vocational training program in personal training. Respondent attends courses half-day and anticipates finishing the program in March, 2011. Respondent's testimony was credible, although she did not provide any documentation regarding her education program.

14. Respondent is active in her children's middle and elementary schools, volunteering for PTA, fundraising events, and the carnival. Respondent has coached youth soccer for the past 10 years. Respondent also volunteered at a transitional program for recovering drug addicts.

15. Respondent took responsibility for the convictions which served as the basis for Department of Real Estate's denial of her license application. Respondent acknowledged that the domestic dispute had escalated unnecessarily, and considered it unfortunate and out of her character. Respondent remains on good terms with her former boyfriend who was involved in the domestic dispute. Both parties acknowledge that they should have handled the incident differently. Respondent testified to maturing and learning since her convictions.

## LEGAL CONCLUSIONS

### *Criminal Convictions*

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 the Commissioner may deny a license to an applicant who 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 to the qualifications, functions or duties of a real estate licensee:

"When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime . . . the crime or act shall be deemed to be substantially related . . . within the meaning of Sections 480 and 490 of the Code if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

[¶] ... [¶]

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶] ... [¶]

(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.

[¶] ... [¶]

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

4. Respondent's conviction for violation of Penal Code section 236, False Imprisonment, as set out in Factual Findings 2 through 5, is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), because respondent's conduct during altercation that resulted in the false imprisonment of her former boyfriend indicated the intent or threat of doing substantial injury to the person. Notwithstanding complainant's assertion that respondent's conviction is also substantially related pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(10), this conviction by itself does not demonstrate a pattern of repeated and willful disregard for the law.

5. Respondent's conviction for violation of Welfare and Institutions Code section 10980, Welfare Fraud by False Statement, as set out in Factual Findings 7, 8, and 9, are substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(1) and (a)(4), because respondent's conviction established fraudulent obtaining of public assistance.

6. Accordingly, respondent's convictions are cause to deny her application under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

#### *Rehabilitation*

7. 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>1</sup>

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<sup>1</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.)  
(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.

8. As set forth in Factual Findings 11 through 15, respondent has offered substantial evidence of rehabilitation under California Code of Regulations, title 10, section 2911. Respondent has completed reimbursement and restitution, community service, and informal probation for the 1995 conviction. Respondent was shown to have a stable family life, successfully raising four children with the support of her parents. Respondent continues to attempt to improve her economic condition through vocational training and studying real estate. Respondent has a history of active participation in her children's school activities, including coaching youth soccer. Respondent's testimony established an acknowledgement

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- (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 prior 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.



of the impact of past decisions, and the extent of her personal growth and maturity since then.

9. However, less than two years have passed since the most recent criminal conviction and respondent is still under informal probation for the 2009 misdemeanor conviction. *In re Gossage* (2000) 23 Cal.4th 1080, 1104-1105, establishes, among other things, that from the standpoint of a licensing agency's regulatory oversight of licensees, rehabilitation from the adverse implication of a criminal conviction cannot begin to be accurately assessed until the licensee is beyond the restrictions of criminal probation and the prospect of incarceration no longer looms over the head of the licensee. Also troubling is respondent's outstanding traffic violation and the small claims judgment against her. However, given respondent's substantial evidence of rehabilitation, consideration should be given to consideration of a restricted license.

10. Respondent has shown to have adequate community involvement, personal growth, and a change in attitude. Although respondent is still on criminal probation, she has sufficiently met the criteria for rehabilitation under the law at this time. However, respondent has not demonstrated the sustained period of rehabilitation necessary to warrant issuance of an unrestricted license. Therefore, it would not be contrary to the public interest to grant respondent a restricted license, on terms and conditions.

#### ORDER

The application of respondent DEWANA LATISHA HALE, for the issuance of a real estate salesperson license is denied; However, the denial is stayed and a conditional and restricted real estate salesperson license shall be issued to Ms. Hale pursuant to section 10156.5 of the Business and Professions Code, if she makes application therefore 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 Ms. Hale 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 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 which 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 four (4) years have elapsed from the effective date of this Decision.


4. ~~During the period of issuance of the restricted license, respondent's employment shall be limited to a supervising broker approved in advance of the employment by the Department.~~ Respondent shall submit with any application for license under any 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 which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which 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.

~~5. Respondent shall, within eighteen (18) months of the issuance of the restricted license under the provisions of section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Real Estate Commissioner of successful completion, at an accredited institution, of a course in real estate practices, and one 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 present satisfactory evidence of successful completion of these courses, the restricted license shall be automatically suspended effective eighteen (18) months after issuance of the restricted license. The suspension shall not be lifted until respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the respondent of the lifting of the suspension.~~

DATED: August 30, 2010

  
TROY K. TAIRA  
Administrative Law Judge  
Office of Administrative Hearings

1 ANNETTE E. FERRANTE, Counsel (SBN 258842)

2 Department of Real Estate

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4 Sacramento, CA 95818-7007

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FILED

APR 20 2010

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE  
9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Application of )  
13 DEWANA L. HALE, )  
14 Respondent. )  
15 )

NO. H-5378 SAC

STATEMENT OF ISSUES

16 The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy  
17 Real Estate Commissioner of the State of California, for this Statement of Issues against  
18 DEWANA L. HALE, (hereinafter "Respondent"), is informed and alleges as follows:

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20 On or about October 23, 2008, Respondent made application to the Department  
21 of Real Estate of the State of California for a real estate salesperson license.

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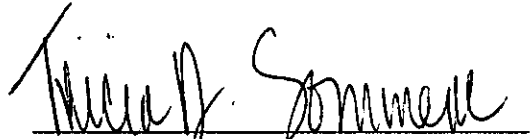
23 On or about January 14, 2009, in the Sacramento County Superior Court, State  
24 of California, Case Number 08M12512, Respondent was convicted of violating Section 236 of  
25 the California Penal Code (False Imprisonment), a misdemeanor which bears a substantial  
26 relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications,  
27 functions, or duties of a real estate licensee.

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On or about September 7, 1995, in the Sacramento County Superior Court, State of California, Case Number 95F04229, Respondent was convicted of violating Section 10980 (c) (2) of the California Welfare and Institutions Code (Welfare Fraud by False Statement), a felony 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.

Respondent's convictions, as alleged in Paragraphs 2 and 3, above, constitute 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.

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.

  
TRICIA D. SOMMERS  
Deputy Real Estate Commissioner

Dated at Sacramento, California,  
this 6<sup>th</sup> day of April, 2010.