

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

In the Matter of the Accusation)	
Against:)	File No. H-27884 LA
)	
GUADALUPE OLIVAS,)	OAH No. L1998120384
)	
Respondent.)	
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PROPOSED DECISION

On February 26, 1999, in Los Angeles, California, H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant, Thomas McCrady was represented by Chris Leong, Staff Counsel.

Respondent, Guadalupe Olivas ("Respondent"), appeared and represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. The Accusation was made by Thomas McCrady, Complainant, who is a Deputy Real Estate Commissioner of the State of California, acting in his official capacity.

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2. On March 5, 1998, the Department of Real Estate ("the Department") issued a real estate salesperson license to Respondent. The license was issued subject to Respondent's completing certain educational requisites pursuant to Business and Professions Code section 10153.4. The conditional salesperson license will expire on September 5, 1999. The salesperson license will expire on March 4, 2002 unless renewed.

3. On March 22, 1995, in the Superior and Municipal Courts of California, County of San Bernardino, in Case No. MO283138, Respondent was convicted, on her plea of guilty, of violation of Penal Code section 368(b) (Caretaker Endangering Health of Dependent Adult), a misdemeanor.

4. On August 10, 1995, in the Superior and Municipal Courts of California, County of San Bernardino, in Case No. MO306921, Respondent was convicted, on her plea of guilty, of violation of Penal Code section 488 (Petty Theft), a misdemeanor involving moral turpitude and one substantially related to the qualifications, functions and duties of a real estate licensee.

5. Complainant concedes that the convictions referenced in Paragraphs 3 and 4, above, cannot stand alone as charging allegations in the Accusation since they are barred by the statute of limitations set forth in Business and Professions Code section 10101. They are addressed solely with respect to information Respondent did and did not disclose on her application for a real estate salesperson license.

6. Respondent submitted her application for real estate salesperson license on February 23, 1998. In response to Question No. 27 on the application, Respondent disclosed her March 22, 1995 conviction for endangerment of a dependent adult, but failed to disclose her August 10, 1995 conviction for petty theft.

7. Respondent is not familiar with the workings of the courts and the language generally used in criminal matters. In disclosing the information concerning her first conviction, Respondent relied on documents she had obtained from the court for the information required on the application. She attempted to obtain documents from the court which related to the second conviction but was unable to locate any such documents. She therefore did not know what to write on the application with respect to that conviction and chose instead not to reference the conviction at all.

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8. Respondent is a single mother of four (4) children, all of whom live with her. Respondent is presently employed as a real estate salesperson. It is her only source of income and the only way she has to support her children.

9. Respondent is remorseful for her failure to properly complete the application. Her real estate career is very important to her. She takes it seriously and depends upon it.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists for the suspension or revocation of Respondent's real estate salespersons license pursuant to Business and Professions Code section 10177(a), for procurement of a real estate license by fraud, misrepresentation, deceit, or by making a material misstatement of fact in an application, as set forth in Findings 3, 4, 6 and 7.

Respondent's failure to disclose the petty theft conviction was unquestionably improper. In the absence of court documents on which to rely, she should have, at least, disclosed the existence of the conviction, even if she was unable to provide any details about it. However, Complainant failed to prove by clear and convincing evidence that Respondent deliberately chose not to disclose the conviction because it was an act of moral turpitude or because she thought disclosure could jeopardize her chances of receiving the license. Therefore, it does not appear that Respondent had any reason to disclose one conviction but not the other. Instead, it seems her failure to disclose the petty theft conviction was more an act of confusion than deceit.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Guadalupe Olivas, under the Real Estate Law are revoked; 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 if Respondent makes application therefor 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 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 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 three (3) years have elapsed from the effective date of this Decision.

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4. Respondent shall submit with any application for license under an 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 nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. 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 license revoked herein, 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 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 issuance of the license revoked herein. 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

7. 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 (4) years after the date of the issuance of the preceding restricted license.

DATED: March 18, 1999

H. Stuart Waxman

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 GUADALUPE OLIVAS,)
)
)
 _____)
 Respondent (s)

Case No. H-27884 LA

OAH No. L-1998120384

FILED
JAN 14 1999
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent (s):

By Chris Leong

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 107 South Broadway, Second Floor, Los Angeles, CA 90012 on FRIDAY, FEBRUARY 26, 1999, at the hour of 2:30 P.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: January 14, 1999

By

Chris Leong
CHRIS LEONG, Counsel

cc: Guadalupe Olivas
S K Star, Inc.
Sacto.
OAH

CEB

RE 501 (La Mac 11/92)

1 CHRIS LEONG, Counsel
2 State Bar Number 141079
3 Department of Real Estate
4 107 South Broadway, Room 8107
5 Los Angeles, California 90012

6 (213) 897-3937

FILED
OCT 13 1998
DEPARTMENT OF REAL ESTATE

By CB

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9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of)
13 GUADALUPE OLIVAS,) NO. H-27884 LA
14 Respondent.) ACCUSATION

15 The Complainant, Thomas McCrady, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against GUADALUPE OLIVAS (hereinafter "Respondent"), is informed
18 and alleges as follows:

19 I

20 Respondent is presently licensed and/or has license
21 rights under the Real Estate Law, Part 1 of Division 4 of the
22 Business and Professions Code (hereinafter "Code"), as a real
23 estate salesperson. Said license is subject to Code Section
24 10153.4. Said license was issued on March 5, 1998. Said
25 license was issued as a result of Respondent's application to
26 the Department for a conditional real estate salesperson license
27 on or about February 23, 1998.

1 II

2 The Complainant, Thomas McCrady, a Deputy Real Estate
3 Commissioner of the State of California, makes this Accusation
4 against Respondent in his official capacity.

5 CONVICTIONS

6 III

7 On or about August 10, 1995, in the Municipal Court of
8 South East Judicial District, County of Los Angeles, State of
9 California, Respondent was convicted of violating one count of
10 Section 488/490.5 of the California Penal Code (Petty Theft), a
11 crime involving moral turpitude which is substantially related
12 under Section 2910, Title 10, California Code of Regulations, to
13 the qualifications, functions or duties of a real estate
14 licensee.

15 IV

16 On or about October 26, 1994, in the San Bernardino
17 County Municipal Court District Central Division, County of San
18 Bernardino, State of California, Respondent was convicted of
19 violating one count of Section 368(b) of the California Penal
20 Code (Caretaker endangering health of dependant adult), a crime
21 involving moral turpitude which is substantially related under
22 Section 2910, Title 10, California Code of Regulations, to the
23 qualifications, functions or duties of a real estate licensee.

24 APPLICATION

25 V

26 In response to Question 27 of said application, to
27 wit: "Detailed explanation of items 24-26 complete one line for



1 each violation below?", Respondent failed to reveal the
2 August 1995 conviction stated above, in Paragraph III.

3 VI

4 Respondent's failure to reveal the criminal conviction
5 set forth in Paragraph III, above, in said application,
6 constitutes the procurement of a real estate license by fraud,
7 misrepresentation, deceit, or by making a material misstatement
8 of fact in said application, which failure to reveal is cause
9 under Code Section 10177(a) for the suspension or revocation of
10 all licenses and license rights of Respondent under the Real
11 Estate Law.

12 WHEREFORE, Complainant prays that a hearing be
13 conducted on the allegations of this Accusation and that upon
14 proof thereof, a decision be rendered imposing disciplinary
15 action against all licenses and license rights of Respondent,
16 GUADALUPE OLIVAS, under the Real Estate Law (Part 1 of Division
17 4 of the Business and Professions Code), and for such other and
18 further relief as may be proper under other applicable
19 provisions of law.

20 Dated at Los Angeles, California
21 this 13th day of October, 1998.

22
23 THOMAS MCCRADY
24 Deputy Real Estate Commissioner

25
26 cc: Guadalupe Olivas
27 Sacto.
PM

