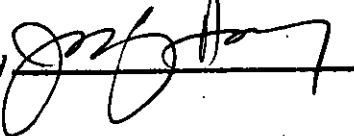


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FILED
MAY 29 2003

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-29366 LA
) L-2002060374
ILONA WINEGARDNER,)
)
Respondent.)

DECISION AFTER REJECTION

This matter was heard by Alan S. Meth, Administrative Law Judge ("Judge") of the Office of Administrative Hearings on December 16, 2002.

The Complainant was represented by Darlene Averetta, Counsel for the Department of Real Estate.

Respondent Ilona Winegardner appeared personally and was represented by Michael R. Schaeffer, Attorney at Law.

Evidence was received, the hearing was closed and the matter stood submitted.

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1 On January 3, 2003, Administrative Law Judge ("Judge")
2 Meth, submitted a Proposed Decision which I declined to adopt as
3 my Decision herein.

4 Pursuant to Section 11517(c) of the Government Code
5 of the State of California, Respondent was served with notice
6 of my determination not to adopt the Proposed Decision of the
7 Administrative Law Judge along with a copy of said Proposed
8 Decision. Respondent was notified that the case would be decided
9 by me upon the record, the transcript of proceedings held on
10 December 16, 2002, and upon any written argument offered by
11 Respondent and Complainant.

12 On March 13, 2003, Argument was submitted by
13 Respondent. On April 3, 2003, Argument was submitted on behalf
14 of Complainant.

15 I have given careful consideration to the record in
16 this case including the transcript of proceedings of
17 December 16, 2002. I have also considered the argument submitted
18 by Respondent and the argument submitted on behalf of
19 Complainant.

20 The following shall constitute the Decision of the Real
21 Estate Commissioner in this proceeding:

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FACTUAL FINDINGS

1 1. The Complainant, Thomas McCrady, Deputy Real
2 Estate Commissioner of the Department of Real Estate of the
3 State of California (hereafter, "Department") filed Accusation
4 No. H-29366 LA in his official capacity on January 24, 2002.
5 Thereafter, Ilona Winegardner ("Respondent") filed a Notice of
6 Defense requesting a hearing.
7

8 2. License History/Department Action

9 The Department issued real estate salesperson's
10 license number 01206649 to Respondent on February 29, 1996, in
11 the employ of licensed real estate broker Michael L. Mallett
12 ("Mallett"). Respondent is presently licensed in the employ of
13 Mallett in Hesperia, California.

14 On March 1, 1996, the Department filed an Order to
15 Desist and Refrain in Department Case No. H-26482 LA, against
16 Respondent based upon the Department's determination that
17 Respondent had acted as a real estate broker within the previous
18 three years without a license.

19 3. Conviction

20 On December 15, 2000, in the Superior Court of
21 the State of California, County of San Bernardino, Respondent
22 entered a plea of guilty to one count of violating Penal Code
23 Section 182(a)(1) (Conspiracy to Commit a Crime), a felony.
24 The Information stated that Respondent conspired with Frank
25 Padziora and Tina Padziora to commit the crime of making a
26 false financial statement in violation of Penal Code Section
27 532(a)(1), a felony.

1 Respondent pled guilty to count one of an eight count
2 Information. As part of the plea bargain it was agreed that
3 upon successful completion of two (2) years of probation, the
4 offense would be reduced to a misdemeanor pursuant to Penal Code
5 Section 17(b)(5).

6 On February 23, 2001, Respondent was sentenced and
7 thereby stood convicted. (Rubenstein vs. Reinecke (1977) 71
8 Cal.App. 3d 406).

9 Respondent was sentenced to 36 months supervised
10 probation, on terms and conditions including 30 days in county
11 jail (which could be served on weekends) and a restitution fine
12 in the amount of \$2,000.

13 The facts surrounding the conviction as set forth in
14 the Information were that in 1997, Frank and Tina Padziora met
15 with Respondent who was licensed as a real estate salesperson.
16 Respondent agreed to assist the Padzioras to purchase a
17 residence. Respondent and the Padzioras created fictitious
18 documents using the Padzioras' 10 year old son's name and social
19 security number. These documents included a check cashing
20 identification card, pay stubs and W-2 income documents.
21 Respondent and Frank and Tina Padziora were present when Frank
22 Padziora forged his son's name on the loan documents and had the
23 loan documents notarized. Escrow was opened using the 10 year
24 old's name on forged documents.

25 Respondent and the Padzioras submitted a forged loan
26 application and the falsified documents to a lender to obtain a
27 loan on residential real property.

1 The crime involves moral turpitude and is
2 substantially related to the qualifications, function and duties
3 of a real estate licensee pursuant to Section 2910, Title 10,
4 Chapter 6, California Code of Regulations ("Regulations").

5 4. Respondent submitted a request for reduction of
6 sentence and early termination of probation. On November 27,
7 2002, the probation officer reported to the court that
8 Respondent was two (2) months shy of the two (2) year probation
9 provided for in the plea agreement, there had been no new
10 violations of law, Respondent had complied with all the terms
11 of probation, she had paid all the fines and fees in full, and
12 no reason existed why the request should not be granted. On
13 December 11, 2002, the court reduced the conviction to a
14 misdemeanor, terminated probation, set aside the conviction, and
15 dismissed the charges against respondent pursuant to Penal Code
16 sections 17, 1203.3 and 1203.4.

17 Factors in Mitigation

18 At the administrative hearing Respondent testified as
19 follows:

20 5. She was born in Hungary. She came to the
21 United States in 1970 and worked in factories, laundries,
22 grocery stores, and banks. She and her husband moved to
23 California in 1973 and her husband began working as a general
24 contractor. Her husband died in 1990. She had worked with
25 him and found it difficult after he died. She completed a
26 subdivision project he had started, and this led her into
27 real estate. She opened her office called New Life in 1992
and continues to work there. It is a small office, with five
or six agents, doing residential sales.

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1 6. Respondent testified and described the
2 circumstances surrounding her conviction as follows: An elderly
3 man who was ill asked her to list his house for sale, and she
4 did. The Padzioras looked at the house and wanted to rent it.
5 The seller offered to have the buyers take over the payments and
6 escrow was opened. The Padzioras wrote a check for the escrow,
7 but it bounced. The Padzioras were having trouble coming up
8 enough money, but the seller let the Padzioras move in anyway.
9 Respondent did take a commission for the transaction. The
10 Padzioras could not make the payments, and the lender started
foreclosure, and the Padzioras were told to move out of the
house. The Padzioras wanted Respondent to do something but she
told them there was nothing she could do. Respondent testified
that the Padzioras began threatening Respondent that they would
kill her and her son and burn down her house if she did not help
them. They then brought her the papers so they could apply for
a loan in their son's name. Respondent forwarded the false
papers to the lender, and she assumed the lender would determine
the papers were false and not fund the loan. The lender did
however fund the loan.

11 7. Respondent further testified but that she did not
12 report the matter because she was scared and that she felt
13 relieved when the District Attorney contacted her when they were
investigating the matter.

14 When Respondent was interviewed by the probation
15 officer following her plea, she told him she did not report the
16 matter because of the threats the Padzioras had made, and she
hoped someone would catch the error and not process the loan.

17 Regarding the Department's 1996 desist and refrain
18 order, Respondent testified that she was selling her own home
19 which she had built and did not feel she needed a license to do
20 that.

21 8. There is no evidence that Respondent alone created
22 the false documents that were submitted to the lender, or that
23 she received any benefit for doing what she did. It appears
24 that Respondent's role in this matter was primarily as a conduit
25 between the buyers and the lender.

26 Factors in Aggravation

27 9. Respondent testified that she opened a real estate
office in 1992, but that she was not doing any real estate
(other than selling her own home) until she had her license.

1 Respondent's testimony is of course self-serving and not
2 supported by any other evidence.

3 Respondent was not licensed by the Department until
4 1996 and the Order to Desist and Refrain found that she had
5 engaged in unlicensed activity during the prior three (3) years.
6 Respondent acknowledged receipt of the Order to Desist and
7 Refrain and did not challenge it within the time required by
8 law. Therefore, the findings set forth the Order to Desist and
9 Refrain are final.

10 10. Respondent testified that she knew what she was
11 doing was wrong and knew she should have reported what had
12 happened. When Respondent was interviewed by the probation
13 officer following her plea, Respondent admitted committing the
14 offense, that she knew the Padziora's used their son's name to
15 obtain a loan to purchase a home, and she knew she should have
16 reported it.

17 Respondent however, did not report the matter to the
18 lender, the police or anyone else. It was not until she was
19 contacted by law enforcement investigating the matter that she
20 cooperated.

21 11. The crime occurred within the context of
22 Respondent's licensed activities and therefore constitutes a
23 very serious matter. It is clear as the Judge found that
24 Respondent's testimony and statements to others that she acted
25 as she did because she was threatened and hoped the buyers'
26 scheme would be discovered by the lender is of course self-
27 serving and not supported by any other evidence.

Witnesses on Respondent's Behalf

12. Several witnesses testified on respondent's behalf as follows:

James Robinson testified that he is a retired Los Angeles Police Officer, having worked at various positions for 31 years. He first met Respondent in the mid-1990s when he and his wife began looking for commercial property in Apple Valley. He has had numerous conversations with her since but did not buy property through her. They became friends and she invited him to attend her church. He now sees her four to six times a month, frequently at church. Robinson testified that he believes Respondent is an honest and straightforward person, and he trusts her. He described a situation in which the City of Los Angeles did not process his retirement papers properly and as a result, he did not receive his retirement benefits for five months. He sought help from various sources without success, and was facing foreclosure on his second mortgage. He went to Respondent for help. Although his credit was bad at the time because he had been late in making payments, Respondent was able to get refinancing for him. He also pointed to cases where Respondent would not take a commission or would give her commission to others.

Sandra Calderon testified that she has been a senior pastor for Father's Love Ministries for the last nine years, after having worked as a bank vault teller for 20 years. She has known Respondent for about a year, since another minister asked her to go to Respondent's office in Hesperia and take over a church meeting once a month. They continued to meet and they became friends. At the meetings, Respondent helped her with the offerings. They have attended Respondent's church together. Calderon testified that she believes Respondent is an honest person, she keeps her word, and does what she says she will do. Calderon stated that she did not know that Respondent had pled guilty to a criminal offense, but if she had known that it would not change her opinion of Respondent. She went on to state that she did not think Respondent would try to deceive anyone or do anything illegal and that she trusts Respondent. She first became aware that Respondent had violated the law 3 to 4 months prior to the hearing, when Respondent asked Calderon to pray for her.

Virginia Contreras testified that she is a retired hospital patient advocate who has known Respondent for eight to ten years. She first met Respondent when she went to the store next to Respondent's office. She and her husband bought their home through Respondent, and Respondent did not take a full commission. Without that, they could not have bought the house, and they would have been homeless. Contreras testified that she has a great deal of love and respect for Respondent, and described her as an honest and caring person.

1 Judy Machado testified that she has been Respondent's
2 secretary for two and one-half years. She felt Respondent was a
3 very compassionate and honest person. She described a recent
4 situation where Respondent helped a family purchase a home
5 and when they did the final walk through, a nice stove was in
6 the home. But when the buyers moved in, they discovered the
7 seller had switched the stove, and Respondent bought them a new
8 stove. Machado has seen Respondent turn away or cut commissions
9 and has told her not to do that because she had to pay the rent
10 on her office. She described Respondent as being too giving and
11 naïve, and has never seen her lie or misrepresent anything.

12 Nick Buckhalter testified that he owns a
13 mechanic/detail shop in Riverside and has known Respondent for
14 eight to nine years. He and his wife wanted to buy some property
15 but they had bad credit. They happened to see Respondent's
16 office, and they went and talked to Respondent. She helped them
17 improve their credit. When they succeeded, Respondent acted as
18 their agent but they did not have enough money to pay the
19 closing costs. Respondent cut her commission so they could
20 complete the transaction.

21 13. Although Respondent presented a lot of character
22 references from people who have known her or dealt with her,
23 stating that she is a religious and honest and compassionate
24 person, perhaps even to a fault, this is not conclusive evidence
25 of Respondent's character.

26 All but two of the above witnesses were either not
27 aware of Respondent's conviction, or they did not learn of the
conviction until many months after it occurred or the day of the
hearing. All the witnesses appear to have received some service
or benefit from Respondent and felt they needed to return a
favor. In addition, none of the witnesses have worked with
Respondent in a business capacity and none of the witnesses have
a real estate license. Respondent's employing broker did not
testify on Respondent's behalf.

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1 Respondent also submitted a number of letters of
2 reference from those who supported her. None of the letters
3 state that the author was aware of Respondent's conviction and
4 many of the authors of the letters had received some service or
5 benefit from Respondent.

6 LEGAL CONCLUSIONS

7 1. Cause exists to revoke or suspend Respondent's
8 real estate salesperson license pursuant to Business and
9 Professions Code Sections 490 and 10177(b), for the conviction
10 of a crime involving moral turpitude and substantially related
11 to the qualifications and duties of a real estate salesperson,
12 set forth in Finding 3.

13 2. Cause to issue a restricted real estate
14 salesperson license to Respondent was not established as
15 discussed below.

16 Criteria of Rehabilitation.

17 3. Criteria of Rehabilitation (Revocation or
18 Suspension) have been developed by the Department pursuant to
19 Section 482(b) of the Business and Professions Code for the
20 purpose of evaluating the rehabilitation of a licensee against
21 whom an administrative disciplinary proceeding for revocation or
22 suspension of the license has been initiated on account of a
23 crime committed by the licensee. Said criteria are set forth at
24 Section 2912, Title 10, Chapter 6, California Code
25 of Regulations ("Regulations").

26 Application of the Criteria of Rehabilitation as set
27 forth in Regulation 2912 reveals the following:

1 Regulation (a): It has now been two years since
2 Respondent's conviction on February 23, 2001. However, in 1996
3 an Order to Desist and Refrain was issued to Respondent for
4 engaging in activity requiring a real estate license during a
5 period of time when she was not licensed, in violation of Code
6 Section 10130. Given this history of substantially related acts
7 and conviction, a longer period of time will be required to
8 assess Respondent's rehabilitation.

9 Regulation (b): Restitution was not required for the
10 victim (mortgage company) because the company was no longer in
11 business. The Court required Respondent to pay \$2,000 to the
12 State Restitution Fund. This condition appears to have been met
13 because Respondent was released from probation and obtained a
14 Penal Code Section 1203.4 dismissal.

15 Regulation (c): Respondent's conviction was
16 expunged/dismissed pursuant to Penal Code Section 1203.4
17 on December 11, 2002.

18 Regulation (d): This Regulation is not applicable
19 because the underlying offense does not require registration
20 pursuant to Penal Code Section 290.

21 Regulation (e): Respondent was discharged from
22 probation on December 11, 2002.

23 Regulation (f): This Regulation is not applicable
24 because there is no evidence that the criminal conviction
25 was attributable to the use of a controlled substance or
26 alcohol.

1 Regulation (g): Respondent had paid all fees and
2 fines required by the court.

3 Regulation (h): Respondent is still employed as a
4 real estate agent by the broker to whom she was employed when
5 the criminal activity and conviction occurred. It is not known
6 if Respondent has corrected the business practices which led to
7 her conviction. It is known that Respondent was only convicted
8 once of the criminal activities.

9 Regulation (i): There is no evidence that Respondent
10 has had any further contact with the Padzioras. However, the
11 Department licensing records reflect that Respondent was
12 employed by licensed real estate broker Michael L. Mallett at
13 the time of commission of the acts that led to the criminal
14 conviction. Respondent is currently employed by Mallett.

15 Regulation (j): Respondent's husband has passed away
16 and according to the Probation Officer's Report, she has one
17 adult child.

18 Regulation (k): There is no evidence of Respondent's
19 enrollment in or completion of educational or training courses.
20 However, if Respondent's license is renewed prior to it's
21 expiration in February, 2004, she must take required continuing
22 education courses.

23 Regulation (l): At the administrative hearing,
24 witnesses testified regarding Respondent's involvement in church
25 activities.

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1 Regulation (m): At the administrative hearing,
2 Respondent testified that she would not do something that is not
3 right again, no matter how much she was threatened. As the
4 Judge found, it is evident that Respondents testimony and
5 statements to others that she acted as she did because she was
6 threatened and hoped the buyers' scheme would be discovered by
7 the lender is of course self-serving and not supported by any
8 other evidence.

9 When asked why she did not go to the police to report
10 the alleged threats, Respondent said that she should have done
11 so. When asked if she told anyone she was being threatened at
12 the time it occurred, she said she had not.

13 If in fact Respondent was threatened, this would not
14 excuse her criminal activity.

15 At the administrative hearing a number of witnesses
16 testified in Respondent's behalf and Respondent submitted a
17 number of letters of support for her. It appears that all the
18 witnesses that testified on Respondent's behalf, and most of
19 those writing letters of support, had received some service or
20 benefit from Respondent and wanted to return a favor. They were
21 not all aware of her conviction or why they were asked to
22 testify or submit a letter on her behalf. None of the
23 references had worked with Respondent in a business capacity and
24 none of the references had a real estate license. In addition,
25 Respondent's employing broker did not testify on her behalf.

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1 It is not known if Respondent's criminal activity was
2 a one time offense or error in judgment by Respondent. However,
3 Respondent was only convicted once of the criminal activities.

4 The evidence does indicate that Respondent was
5 cooperative with law enforcement officials and that she admitted
6 guilt and entered a plea of guilty. However, this was done
7 after the crime was committed and after Respondent was
8 confronted by law enforcement officials. This also was self-
9 serving. Respondent was originally charged with eight (8)
10 felony counts including Conspiracy, Grant Theft, Making False
11 Financial Statements, Attempt to File False or Forged Instrument
12 and Forgery. As a result of Respondent's cooperation and a
13 plea bargain, Respondent was only convicted of one (1) felony
14 count.

15 Respondent's sentence would have been significantly reduced as
16 a result of this plea bargain.

17 In addition, when asked at the administrative hearing
18 why she pled guilty, Respondent stated that she did not know and
19 that she just did it because she was told to do so. Respondent
20 has not unequivocally admitted guilt or accepted responsibility
21 for her actions.

22 Considering all these factors, a change in attitude
23 has not been shown.

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The Offense.

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2 4. Although it was not shown that Respondent was the
3 primary mover behind the offense, Respondent knew the paperwork
4 was fraudulent when she submitted it to the mortgage company.
5 This was not just an error in judgment, but criminal in nature.
6 I disagree with the Judge's finding that the evidence
7 established that Respondent made a mistake in failing to report
8 her client's illegal activities, and established that it is
9 unlikely to happen again. As previously discussed herein, the
10 only evidence presented was Respondent's testimony which was
11 self-serving and not supported by any other evidence.

12 It is not known if there was other misconduct or
13 criminal offenses by Respondent, however, there is no evidence
14 of such.

Licensee Responsibilities.

15
16 5. Honesty and truthfulness are attributes
17 required of a real estate licensee because they are
18 fiduciaries in their dealings with the public. A real
19 estate license by its very nature gives the licensee access
20 to the personal information, funds, and property of those
21 who seek the licensees services. Clients rely on the
22 licensee's integrity in representing them, disclosing
23 important facts about the properties and information he or
24 she is privy to and holding monies and other personal
25 property in a fiduciary capacity.

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1 The Legislature intended to ensure that real
2 estate brokers and salespersons will be honest,
3 truthful and worthy of the fiduciary responsibilities
4 which they will bear. (Ring v. Smith (1970)
5 5 Cal.App.3rd 197, 205, Golde v Fox (1976) 98
6 Cal.App.3d, 167, 177.). Harrington v. Department
7 of Real Estate (1989) 214 Cal.App.3d, 394, 402.

8 6. The Real Estate Law and the disciplinary
9 procedures provided for in the Real Estate Law are designed to
10 protect the public and to achieve the maximum protection for the
11 purchasers of real property and those dealing with real estate
12 licensees (Business and Professions Code Section 10050 and
13 Handeland v. Department of Real Estate (1976) 58 Cal.App.3d
14 513.)

15 7. Real estate licensees occupy a unique position of
16 trust and responsibility toward the consuming public. They
17 function with little supervision. The possession of a real
18 estate license, even a license issued on a restricted basis,
19 entitles the holder to access to the homes and property of
20 others without supervision. Such licensees must be trustworthy.
21 The public is entitled to assurance that persons to whom real
22 estate licenses are issued are persons that can be relied upon
23 and that they can be trusted with such access and that their
24 personal property is safe with licensees.

25 8. Respondent's crime occurred within the context of
26 her licensed activity. There is a risk to the consuming public,
27 if Respondent is allowed to retain a real estate license. We
cannot know with certainty that Respondent will not commit
another offense, thus, her licensure poses a risk to the public
interest.

1 Respondent was licensed as a real estate salesperson
2 employed by a real estate broker when the offense occurred.
3 Therefore, even if Respondent is granted a restricted real
4 estate salesperson license, it is not certain that the required
5 broker oversight would control Respondent's activities and
6 protect the public. A restricted license allows licensees to
7 perform the same acts as a non-restricted license including the
8 same access into homes of members of the public.

9 9. Respondent argued that her real estate license is
10 the primary means to earn a livelihood. However, the
11 Department's role is to protect the public interest and not to
12 provide Respondent the ability to earn a living. There are
13 other employment opportunities and jobs available.

14 10. Respondent testified that she engaged in the
15 criminal activity because she had been threatened and was
16 scared. Licensees may be under stress and they may be
17 threatened and pressured to violate the law. This does not
18 excuse or justify violation of the law.

19 11. I disagree with the Administrative Law Judge's
20 opinion that it would not be against the public interest to
21 allow Respondent to continue to work as a real estate
22 salesperson with a restricted license. Whether Respondent
23 will continue to avoid committing fraudulent crimes is unknown.

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1 Respondent was only recently released from the
2 supervision of the criminal justice system. After Respondent
3 has spent a period of time without the supervision of the
4 criminal justice system, her actions can be again evaluated and
5 her level of rehabilitation can be more accurately determined.
6 California courts have held that little weight is placed on the
7 fact that a license applicant did not commit additional crimes
8 while in prison, or while on parole or probation. (See In re
9 Menna (1995) 11 Cal.4th 975; Seide v. Committee of Bar Examiners
10 (1989) 49 Cal.3d 933) For example, In re Gossage (2000) 23
11 Cal.4th 1080, the court noted that persons under the direct
12 supervision of correctional authorities are required to behave
13 in an exemplary fashion and gave little weight to the fact that
14 a licensee did not commit additional crimes during the period of
15 probation or while engaged in the disciplinary process. Such is
16 the case with Respondent.

17 Respondent's conviction coupled with the Order to
18 Desist and Refrain issued to her, indicates her propensity to
19 do the wrong thing. More time is needed after probation to
20 determine if Respondent is rehabilitated.

21 12. Respondent poses a threat to the public interest.
22 It has not been shown that Respondent is rehabilitated and that
23 she will not engage in similar criminal and dishonest acts as a
24 real estate licensee. It has not been shown that the public
25 welfare would be adequately protected by allowing Respondent to
26 retain a real estate license.

27 ///

1 A determination cannot be made that the public would
2 be adequately protected by the issuance of a restricted license
3 to Respondent at this time.

4 ORDER

5 WHEREFORE, THE FOLLOWING ORDER is hereby made:

6 All licenses and licensing rights of Respondent
7 ILONA WINEGARDNER under the Real Estate Law are revoke.

8 This Decision shall become effective at 12 o'clock noon
9 on June 18, 2003.

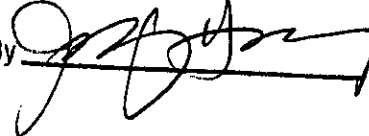
10 IT IS SO ORDERED

11 May 23, 2003,
12 PAULA REDDISH ZINNEBANN
13 Real Estate Commissioner
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FILED
JAN 24 2003

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

No. H-29366 LA

ILONA WINEGARDNER,)

L-2002060374

Respondent.)

NOTICE

TO: ILONA WINEGARDNER, Respondent, and MICHAEL R. SCHAEFFER, her Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 3, 2003, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 3, 2003, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on December 16,

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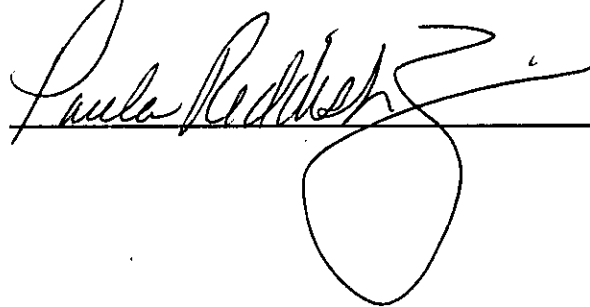
1 2002, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of December 16, 2002, at the Los Angeles
6 office of the Department of Real Estate unless an extension of
7 the time is granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Los Angeles office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: January 21, 2003

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15 PAULA REDDISH ZINNEBANN
Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ILONA WINEGARDNER,

Respondent.

Case No. H-29366 LA

OAH No. L2002060374

PROPOSED DECISION

On December 16, 2002, in Los Angeles, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Darlene Averetta, Assistant Chief Counsel, represented complainant.

Michael R. Schaeffer, Attorney at Law, represented respondent.

The matter was submitted on December 16, 2002.

FACTUAL FINDINGS

1. Thomas McCrady, Deputy Real Estate Commissioner of the State of California (hereafter, "Department") filed Accusation No. H-29366 LA in his official capacity on January 24, 2002. Respondent filed a Notice of Defense.

2. The Department issued real estate salesperson's license number 1206649 to respondent on February 29, 1996, and she is presently licensed in the employ of Michael L. Mallett in Hesperia.

On March 1, 1996, the Department filed an Order to Desist and Refrain against respondent based upon its determination that respondent within the past three years had acted as a real estate broker or salesperson within the previous three years without a license.

3. On December 15, 2000, in the San Bernardino County Superior Court, respondent was convicted following her plea of guilty of one count of violating Penal Code section 182(a)(1), conspiracy to commit a crime, a felony. The crime was making a false financial statement in order to procure a real estate loan in violation of Penal Code section 532(a)(1). The plea bargain called for the offense to be reduced to a misdemeanor upon

successful completion of two years of probation. On February 23, 2001, the court placed respondent on probation for 36 months on condition, among others, she serve 30 days in county jail on weekends and pay a restitution fine in the amount of \$2,000.

The facts and circumstances of the offense are as follows: Frank and Tina Padziora hired respondent to assist them in the purchase of a home. Their credit was such that they could not qualify for a loan. The Padzioras created fictitious documents in their son's name and then forged his name on loan documents. Respondent forwarded the false documents to a lender who funded the loan. Mr. Padziora then forged a new grant deed which conveyed the property to him and his wife, and had it recorded.

The crime involves moral turpitude and is substantially related to the qualifications, functions, and duties of a real estate salesperson.

4. Respondent submitted a request for reduction of sentence and early termination of probation. On November 27, 2002, the probation officer reported to the court that respondent was two months shy of the two years provided for in the plea agreement, there have been no new violations, respondent has complied with all the terms of probation, she has paid all the fines and fees in full, and no reason existed why the request should not be granted. On December 11, 2002, the court reduced the conviction to a misdemeanor, terminated probation, set aside the conviction, and dismissed the charges against respondent pursuant to Penal Code section 1203.4.

5. Respondent is 50 years old and was born in Hungary. She came to the United States in 1970 and worked in factories, laundries, grocery stores, and banks. She and her husband moved to California in 1973 and her husband began working as a contractor. He died in 1990. She worked with him and found it difficult after he died. She completed a subdivision project he had started, and this led her into real estate. She opened her office called New Life in 1992 and continues to work there. It is a small office, with five or six agents, doing residential resales.

6. Respondent described the circumstances surrounding her conviction as follows: an elderly man asked her to list his house for sale, and she did. The Padzioras looked at the house and wanted to rent it. The seller offered to have the buyers take over the payments. The Padzioras wrote a check but it bounced. Respondent set up an escrow but the buyers were having trouble coming up enough money for a down payment. The seller let the Padzioras move in anyway but they could not make the payments, and the lender started foreclosure. The Padzioras wanted respondent to do something but she told them there was nothing she could do. She did not even receive a commission in the transaction. The Padzioras began threatening respondent that they would kill her and her son and burn down her house if she did not do anything. They then brought her papers creating a false identity so they could apply for a loan in their son's name. Respondent forwarded the false papers to the lender, fully expecting the lender would determine the papers were false and not fund the loan. To her surprise, the lender funded the loan.

Respondent knew what she was doing was wrong and knew she should report what had happened, but testified she acted as she did because she was scared. She felt relieved when the District Attorney investigated the loan and discovered what had occurred.

When respondent was interviewed by the probation officer following her plea, respondent admitted committing the offense and knowing she should have reported it. She told him she did not report it because of the threats the Padzioras had made, and she hoped someone would catch the error and not process the loan.

Regarding the Department's 1996 desist and refrain order, respondent testified she was selling her own home that she had built and did not feel she needed a license to do that.

7. Several witnesses testified on respondent's behalf. James Robinson is a retired Los Angeles Police Officer, having worked at various positions for 31 years. He first met respondent in the mid-1990s when he and his wife began looking for commercial property in Apple Valley. He has had numerous conversations with her since but has never done business with her. They became friends and she invited him to attend her church. He now sees her four to six times a month, frequently at church. Robinson believes respondent is an honest and straightforward person, and he trusts her. He described a situation in which the City of Los Angeles did not process his retirement papers properly and as a result, he did not receive his retirement benefits for five months. He sought help from various sources without success, and was facing foreclosure on his second mortgage. He went to respondent for help. Although his credit was bad at the time because he had been late in making payments, respondent was able to get refinancing for him. He also pointed to cases where respondent would not take a commission or would give her commission to others.

Sandra Calderon has been a senior pastor for Father's Love Ministries for the last nine years, after having worked as a vault teller for 20 years. She has known respondent for about a year, since another minister asked her to go to respondent's office in Hesperia and take over a church meeting. They continued to meet and they became friends. At the meetings, respondent helped her with the offerings. They have attended respondent's church together. In Calderon's view, respondent is an honest person, she keeps her word, and does what she says she will do. After learning of her conviction, Calderon testified she felt respondent would never do anything to deceive anyone, and is trustworthy. She learned of the conviction several months ago, when respondent asked her to pray for her.

Virginia Contreras is a retired hospital patient advocate who has known respondent for eight to ten years. Their offices were adjacent to each other. She and her husband bought their home through respondent, and respondent did not take a full commission. Without that, they could not have bought the house, and they would have been homeless. Contreras has a great deal of love and respect for respondent, and described her as an honest and caring person.

Judy Machado has been respondent's secretary for two and one-half years. She felt respondent was a very compassionate and honest person. She described a recent situation where respondent helped a family purchase a home and when they did the final walk

through, a nice stove was in the home. But when the buyers moved in, they discovered the seller had switched the stove, and respondent bought them a new stove. Machado has seen respondent turn away or cut commissions and has told her not to do that because she had to pay the rent on her office. She described respondent as being too giving and naïve, and has never seen her lie or misrepresent anything.

Nick Buckhalter owns a mechanic/detail shop in Riverside and has known respondent for eight to nine years. He and his wife wanted to buy some property but they had bad credit. They happened to see respondent's office, went in, and talked to respondent. She immediately began to help them improve their credit. When they succeeded, respondent acted as their agent but they did not have enough money to pay the closing costs. Respondent cut her commission so they could complete the transaction.

8. Respondent also submitted letters from a buyer and a contractor who strongly supported her.

9. The Department's criteria of rehabilitation are found in Title 10, California Code of Regulations, section 2912. In the context of those criteria, respondent established the conviction occurred two years ago, there is no history of criminal conduct, her conviction was expunged, she had her probation period reduced and she has completed it successfully, she paid the fines imposed by the court, and performs volunteer work for her church. There were no issues relating to restitution or controlled substances. Respondent offered no evidence regarding recent formal educational or vocational training courses.

The crime occurred within the context of respondent's licensed activities and therefore constitutes a very serious matter. Her testimony and statements to others that she acted as she did because she was threatened and hoped the buyers' scheme would be discovered by the lender is of course self-serving and not supported by any other evidence. On the other hand, the probation officer's report describing the offense indicated the Padriozas created the false documents that were submitted to the lender. It does not appear respondent's role in this matter was other than as a conduit between the buyers and the lender, and there is no evidence in the report that she received any benefit, financial or otherwise, for doing what she did.

Respondent presented substantial evidence from people who have known her or dealt with her that she is an honest and compassionate person, perhaps even to a fault. She is a deeply religious person. The evidence established she made a mistake in failing to report her clients' illegal activities, and further established it is unlikely to happen again. On balance, it would not be against the public interest to allow respondent to continue to work as a real estate salesperson with a restricted license.

LEGAL CONCLUSIONS

1. Cause to revoke or suspend respondent's real estate salesperson's license was established for violation of Business and Professions Code sections 490 and 10177(b),

conviction of a crime involving moral turpitude and substantially related to the qualifications, functions and duties of a real estate salesperson, by reason of Finding 3.

2. Cause to issue a restricted real estate salesperson's license to respondent pursuant to Business and Professions Code section 10156.5 was established by Findings 4 through 9.

ORDER

All licenses and licensing rights of respondent Ilona Winegardner 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 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 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 this 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 attaching to the restricted license until two years have elapsed from the effective date of this Decision.

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.

not adopted

5. Respondent shall, within nine 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: 1/3/03


ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

58070

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 ILONA WINEGARDNER,)
)
 _____)
 Respondent

Case No. **H-29366 LA**

OAH No. L-2002060374

FILED
OCT 10 2002
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on **MONDAY, DECEMBER 16, 2002**, at the hour of **1:30 P.M.**, 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: October 10, 2002

By


DARLENE AVERETTA
Assistant Chief Counsel

cc: Ilona Winegardner
Michael L. Mallett
Michael R. Schaefer, Esq.
Sacto.
OAH
RE 501 (Rev. 8/97)

SACTO

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

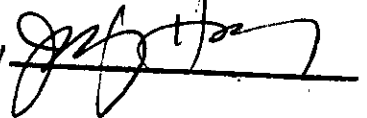
In the Matter of the Accusation of)
)
ILONA WINEGARDNER,)
)
)
_____)
Respondent.

Case No. **H-29366 LA**

OAH No. L-2002060374

FILED
JUL 03 2002
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

By 

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on **THURSDAY, AUGUST 29, 2002**, at the hour of **10:00 A.M.**, 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: July 3, 2002

By


DAVID EDWARD BRUCE, Counsel

cc: Ilona Winegardner
Michael L. Mallett
Michael R. Schaefer
Sacto.
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SEAN
CRAHAN

SEAN CRAHAN, SBN 49351
Department of Real Estate
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Telephone: (213) 576-6907 (direct)
-or- (213) 576-6982 (office)

FILED
JAN 24 2002
DEPARTMENT OF REAL ESTATE

[Signature]

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-29366 LA
ILONA WINEGARDNER,)	A C C U S A T I O N
Respondent.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, acting in his official capacity, for cause of accusation against ILONA WINEGARDNER, is informed and alleges as follows:

1.

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

2.

ILONA WINEGARDNER, sometimes referred to as Respondent, is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California

1 Business and Professions Code, hereafter cited as the "Code").
2 At all times herein mentioned, Respondent was licensed by the
3 Department of Real Estate of the State of California as a real
4 estate salesperson.

5 3.

6 On or about February 23, 2001, in the San Bernardino
7 County Superior Court, State of California, Case No. FSB 023887,
8 Respondent was convicted of violating Penal Code Section
9 182(a)(1) [conspiracy to commit real estate loan fraud], a
10 felony, a crime of moral turpitude and a crime substantially
11 related to the qualifications, functions or duties of a real
12 estate licensee under Section 2910, Chapter 6, Title 10 of the
13 California Code of Regulations. Respondent was sentenced to
14 three (3) years' probation.

15 4.

16 The crime of which Respondent was convicted, as
17 described in Paragraph 3 above, constitutes cause for suspension
18 or revocation of Respondent's real estate licenses and license
19 rights under Code Sections 490 and 10177(b).


20 5.

21 PRIOR ADMINISTRATIVE ACTION

22 On or about March 1, 1996, Respondent was served with
23 an Order to Desist and Refrain in H-26482 LA ordering Respondent
24 to Desist and Refrain from violating Code Section 10130,
25 performing acts requiring a real estate license without being
26 licensed under a broker.

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 the licenses and license rights of Respondent ILONA WINEGARDNER 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 applicable provisions of law.

Dated at Los Angeles, California
this 24th day of January, 2002.


Thomas McCrady
Deputy Real Estate Commissioner

cc: Ilona Winegardner
Michael L. Mallett
TMC
Sacto
EME