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2 On July 3, 2006, Respondent petitioned for the
3 removal of restrictions attaching to Respondent's real estate
4 salesperson license.

5 I have considered the petition of Respondent and the
6 evidence submitted in support thereof. Respondent has
7 demonstrated to my satisfaction that Respondent meets the
8 requirements of law for the issuance to Respondent of an
9 unrestricted real estate salesperson license and that it would
10 not be against the public interest to issue said license to
11 Respondent.

12 NOW, THEREFORE, IT IS ORDERED that Respondent's
13 petition for removal of restrictions is granted and that a real
14 estate salesperson license be issued to Respondent if
15 Respondent satisfies the following conditions within nine (9)
16 months from the date of this Order:

17 1. Submittal of a completed application and payment
18 of the fee for a real estate salesperson license.

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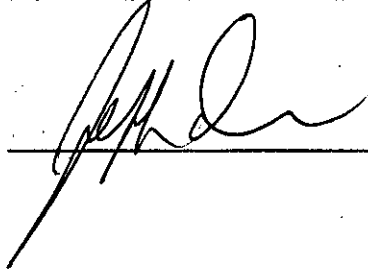
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b. Submittal of evidence of having, since the most
recent issuance of an original or renewal real estate license,
taken and successfully completed the continuing education
requirements of Article 2.5 of Chapter 3 of the Real Estate Law
for renewal of a real estate license.

This Order shall be effective immediately.

Dated: 1-23-07

JEFF DAVI
Real Estate Commissioner



cc: Michele M. Mayer
P.O. Box 10352
Palm Desert, CA 92255

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

MICHELE MARIE MAYER,

Respondent.

DRE Case No. H-30217 LA

OAH No. L2003080389

PROPOSED DECISION

This matter came on regularly for hearing before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, at Los Angeles, California on December 9, 2003. Complainant Maria Suarez and the Department of Real Estate ("DRE") were represented by James Peel, Staff Counsel. Respondent Michele Marie Mayer was present and was represented by Paul D. Bojic, attorney at law.

Documentary and oral evidence was received and the matter was submitted.

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. The Statement of Issues was made by Maria Suarez, a Deputy Real Estate Commissioner, in her official capacity.
2. Respondent filed an application for license as a real estate salesperson to DRE on October 28, 2002.
3. In her application for license, Respondent answered "Yes" to question 25, which asked whether she had ever been convicted of violating the law. In her answer to question 27 asking for more details, Respondent gave information of a conviction for shoplifting in 2002 (see Findings 4 and 5). Respondent did not give any information concerning a conviction for forgery in 1981 (see Findings 6 and 7).

4. On September 3, 2002, in the Superior Court, County of Riverside, Indio branch, in case no. INM127965, Respondent was convicted on her plea of guilty to violating Penal Code section 490.5 (shoplifting), a misdemeanor which is a crime of moral turpitude and a crime that is substantially related to the qualifications, functions and duties of a DRE licensee under the criteria set forth in California Code of Regulations, Title 10, section 2910(a)(1).

Respondent was placed on summary probation for 36 months on various terms and conditions, including that she pay fees and fines of \$210. Respondent paid the fees and fines.

On December 16, 2002, Respondent obtained an order for early termination of her probation. On May 8, 2003, Respondent obtained an order under Penal Code section 1203.4 to set aside the plea of guilty, to enter a plea of not guilty, and to dismiss the case.

5. Respondent testified to the facts and circumstances leading to the conviction. On August 3, 2002 she was grocery shopping and forgot her wallet in the car. Without thinking, she left the store with items in the cart to retrieve her wallet, and was stopped by an employee for shoplifting. After entering her plea in court, she was advised to pay her fine and seek early termination of her probation, which was granted.

6. On September 18, 1981, in the Circuit Court, County of Washington, State of Oregon, in case no. 20-997, Respondent was convicted on her plea of guilty to violating Oregon Revised Statutes 165.013 (forgery), a felony which is a crime of moral turpitude and a crime that is substantially related to the qualifications, functions and duties of a DRE licensee under the criteria set forth in California Code of Regulations, Title 10, section 2910(a)(1, 2, 4 and 8).

Imposition of sentence was suspended and Respondent was placed on supervised probation for 3 years on various terms and conditions, including that she pay restitution of \$375 and fees and fines. Respondent paid the restitution, fees and fines.

On August 19, 2003, Respondent obtained an order under Oregon Revised Statutes 137.225 to set aside the conviction and records of arrest.

7. The facts and circumstances leading to the conviction are that, on February 9, 1981, she wrote and delivered a "bad" check for \$375.

8. Respondent testified that she had no intention to deceive or mislead the DRE concerning the Oregon conviction. As she explained, it occurred 23 years ago and in the interim she had raised 4 children and pursued a successful career in real estate. She wanted to forget the events, and she did.

9. Respondent obtained a real estate license in Oregon in 1989, which expired on April 30, 1995. There was no evidence whether Respondent was asked about convictions in her application for that license and, if so, whether she revealed the 1981 conviction.

10. Respondent came to California in October 2001. She began working as an administrative assistant and receptionist for Windermere real estate in Coachella Valley and, since then has participated in the growth and expansion of the business and the opening of several other offices. She answers phones, orders supplies for all of the offices, and is responsible for handling business funds. She interacts closely with the firm's agents (approximately 135), management and clients, and has often been complimented on how she deals with problems.

Respondent gathered an impressive array of recommendation letters. The co-owners of Windermere praise her professional and courteous behavior, initiative, integrity and knowledge of the industry. The designated broker and numerous other co-workers for Windermere, the business manager for the co-owners, and a competing real estate broker in the area, all offer similar support based upon their experience and interactions with Respondent. All of the letters support Respondent's testimony that she has the professional skills and knowledge necessary to be a successful real estate salesperson.

11. The DRE has established criteria for rehabilitation from conviction of a crime, found at California Code of Regulations, Title 10, section 2911, as follows:

- Subsection (a), passage of at least two years since the conviction;
- Subsection (b), restitution;
- Subsection (c) expungement of the conviction;
- Subsection (d) expungement of the requirement to register as an offender;
- Subsection (e) completion of the criminal probation;
- Subsection (f), abstinence from drugs or alcohol that contributed to the crime;
- Subsection (g), payment of any criminal fines or penalties;
- Subsection (h) stability of family life;
- Subsection (i) enrollment in or completion of educational or training courses;
- Subsection (j) discharge of debts to others;
- Subsection (k) correction of business practices causing injury;
- Subsection (l) involvement in community, church or private programs for social betterment;
- Subsection (m) new and different social and business relationships; and
- Subsection (n) change in attitude from the time of conviction to the present.

12. Respondent has submitted convincing evidence of her rehabilitation in the overwhelming majority of the criteria that apply to her from Finding 11.

CONCLUSIONS OF LAW AND DISCUSSION

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Grounds exist to deny Respondent's application for a salesperson's license pursuant to Business and Professions Code sections 480(a)(1) and 10177(b), for convictions of crimes as set forth in Findings 2, 4 and 6.

2. Grounds exist to deny Respondent's application for a salesperson's license pursuant to Business and Professions Code sections 480(c) and 10177(a), for failure to disclose a conviction of a crime as set forth in Findings 2, 3 and 6.

3. There are several cases relating to this type of scenario to which reference is made.

In *Jones v. Maloney* (1951) 106 Cal.App.2d 80, an applicant for an insurance license failed to disclose 2 misdemeanor convictions which had occurred nine and twenty years before the application. As there was nothing in the circumstances of the convictions that would have justified the denial of the application, the omissions were not material and there was no cause to revoke.

In *DeRasmo v. Smith* (1971) 15 Cal.App.3d 601, a real estate salesman had omitted a 1953 drug conviction in New York from his application in 1967. He thought it had been expunged and did not intend to deceive. As there was no evidence that the application would have been denied if the conviction had been revealed, the court overturned the license revocation.

Although there was no issue of a failure to disclose the conviction in *Brandt v. Fox* (1979) 90 Cal.App.3d 737, nevertheless its discussion is informative. The applicant had a felony conviction for distribution of cocaine 2 years before his application. However, because the applicant's actions had been very peripheral to the crime (he had been paid to introduce two people who later negotiated the drug sale that he was not involved in), and because he had lead an "exemplary life prior to the arrest" and due to other factors, the court decided the conduct was unlikely to recur and the license should be granted.

Finally, in *Madrid v. Dept. of Real Estate* (1984) 152 Cal.App.3d 454, the applicant failed to disclose in his 1980 application a felony (later reduced to a misdemeanor) from Arizona in 1975 relating to fraudulent use of bingo cards. The conduct was not minor, nor was the conviction remote in time. The applicant's testimony that he forgot about it and thought the application only referred to California convictions was found to lack credibility,

and the court concluded that he had knowingly made a material misstatement and that the omission was willful.

4. Using these prior cases as a guide, and in consideration of the facts in evidence, it is determined that Respondent should receive a restricted license. The 1981 conviction, by itself, is not a basis to deny licensure in view of Respondent's rehabilitation. The failure to disclose the conviction is understandable under the circumstances and, in conjunction with the conviction itself, would justify a restricted license. While it is troubling that Respondent also suffered a conviction in 2002, it is apparent that the convicting court thought little of the crime and was impressed by Respondent because it terminated her probation only 3½ months after it began.

Under a restricted license, Respondent will be supervised by a broker who is aware of her restrictions and the reasons therefore, and will be required to provide the appropriate level of supervision.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to the Respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

5. Pursuant to section 10154, if Respondent has not satisfied the requirements for an unqualified license under section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: January 29, 2004.

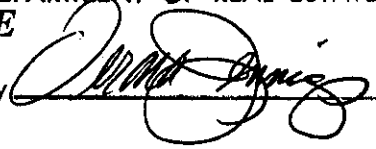


DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

SACTO

FILED
OCT 30 2003
DEPARTMENT OF REAL ESTATE

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

By 

In the Matter of the Application of

MICHELE MARIE MAYER

}
}

Case No. H-30217 LA

OAH No. L-2003080389

Respondent

**CONTINUED
NOTICE OF HEARING ON APPLICATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at **Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on December 9, 2003**, at the hour of **1:30 p.m.**, or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

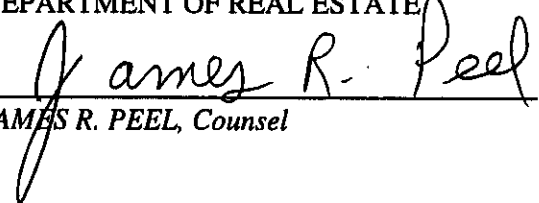
You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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.

Dated: October 30, 2003

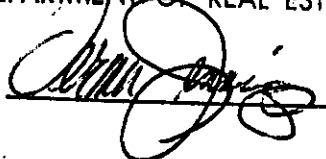
DEPARTMENT OF REAL ESTATE
By 
JAMES R. PEEL, Counsel

cc: Michele Marie Mayer
Paul D. Bojic, Esq.
J.D. Cantwell/Sacto./OAH

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FILED
AUG 25 2003

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By 

In the Matter of the Application of

MICHELE MARIE MAYER

}

Case No. H-30217 LA

OAH No. L-2003080389

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on September 23, 2003, at the hour of 11:00 a.m., or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

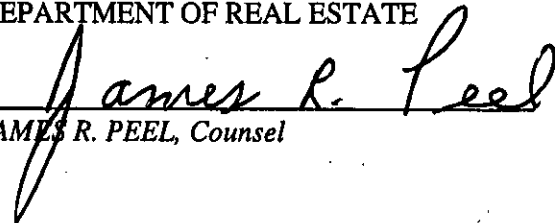
You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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

By 
JAMES R. PEEL, Counsel

Dated: August 22, 2003

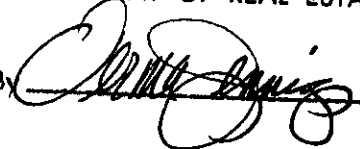
cc: Michele Marie Mayer
James David Cantwell
Sacto./OAH

SACD.
Play

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

FILED
AUG - 7 2003
DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Application of)	No. H-30217 LA
12	MICHELE MARIE MAYER,)	<u>STATEMENT OF ISSUES</u>
13	Respondent.)	
14)	

15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against MICHELE MARIE MAYER (Respondent) is informed and alleges
18 in her official capacity as follows:

19 I

20 On or about October 28, 2002, Respondent applied to the
21 Department of Real Estate of the State of California for a real
22 estate salesperson license with the knowledge and understanding
23 that any license issued as a result of that application would be
24 subject to the conditions of Section 10153.4 of the Business and
25 Professions Code.

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II

As part of the application, Respondent represented to the Department that she had been convicted of violations of law, as follows:

On or about September 3, 2002, in the Superior Court of California, County of Riverside, Indio Branch, Respondent was convicted of violating Section 490.5 of the Penal Code (Shoplifting).

III

On or about September 18, 1981, in the Circuit Court, County of Washington, State of Oregon, Respondent was convicted of violating ORS 165.013 (Forgery).

IV

Said matters outlined above involve moral turpitude and are substantially related to the qualifications, functions or duties of a real estate licensee.

V

Respondent's failure to reveal the matter set forth in Paragraph III in said application constitutes the attempted procurement of a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact in said application, or by knowingly making a false statement of fact required to be revealed in said application, which is cause for denying Respondent's application for a real estate license under Sections 480(c) and 10177(a) of the Business and Professions Code of the State of California.

VI

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2 Respondent's convictions in the matters referred to in
3 Paragraphs II and III are cause under Sections 480(a)(1) and
4 10177(b) of the Business and Professions Code for denying
5 Respondent's application for a real estate license.

6
7 The Statement of Issues is brought under the provisions
8 of Section 10100, Division 4 of the Business and Professions Code
9 of the State of California and Sections 11500 through 11528 of
10 the Government Code.

11 WHEREFORE, the Complainant prays that the above-
12 entitled matter be set for hearing and, upon proof of the charges
13 contained herein, that the Commissioner refuse to authorize the
14 issuance of, and deny the issuance of, a real estate broker
15 license to Respondent MICHELE MARIE MAYER and for such other and
16 further relief as may be proper in the premises.

17 Dated at Los Angeles, California,
18 this 30th day of July, 2003.

19
20 
21 MARIA SUAREZ
22 Deputy Real Estate Commissioner

23
24 cc: Michele Marie Mayer
25 James David Cantwell
26 Maria Suarez
27 Sacto.
LM