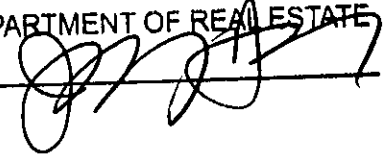


FILED

JUN 09 2011

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: 

* * * * *

In the Matter of the Accusation of)
)
)
 TRACY CLELAND BOWIE,)
)
)
 Respondent.)
_____)

No. H-36834 LA
L-2010110110

DECISION

The Proposed Decision dated May 9, 2011, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

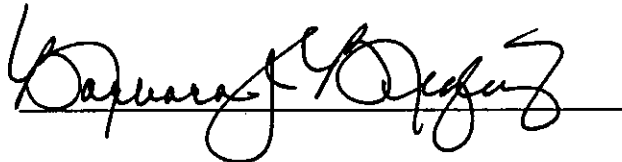
The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on JUN 29 2011.

IT IS SO ORDERED 6/6/11

Barbara J. Bigby
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation against

TRACY CLELAND BOWIE

License No. S/01234314

Respondent.

Case No. H – 36834 LA

OAH No. 2010110110

PROPOSED DECISION

Administrative Law Judge pro tem Elwood B. Hain, Jr., Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on April 12, 2011.

Julie L. To, Staff Counsel, represented complainant Maria Suarez (Complainant), Deputy Real Estate Commissioner of the State of California.

Ronald Talmo, Esq. and Scott D. Hughes, Esq., represented Respondent Tracy Cleland Bowie.

Oral and documentary evidence was received, and the matter argued.

The matter was submitted on April 12, 2011.

FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in her official capacity.
2. Respondent is licensed as a salesperson under the Real Estate Law of the Business and Professions Code. She was first licensed on February 13, 1998, and worked for two years. She renewed her license in 2008 and began working under it soon after.

3. On August 10, 2009, in the California Superior Court, County of Orange, Respondent, upon her guilty plea, was convicted of violating California Penal Code sections 459-460, subdivision (b), Second Degree Commercial Burglary, a misdemeanor; section 487, subdivision (a), Grand Theft, a misdemeanor; and section 496, Receiving Stolen Property, a misdemeanor.

4. For the conviction of Second Degree Commercial Burglary, the court sentenced Respondent to 60 days in jail, of which 55 days were stayed on the condition that she not violate the terms of her probation, and Respondent was placed on three years informal probation on certain terms and conditions including a \$100 fine and restitution. The court stayed sentencing on the other two counts pursuant to Penal Code 654. Respondent is in compliance with her probation. She has paid the fine and made restitution. The stolen item was returned to the store undamaged, in the original package. She is still on probation.

5. The facts and circumstances leading to Respondent's conviction are as follows: On March 14, 2009, Respondent took a television set from a Target store without paying for it. She took it home and put it in her garage.

6. There have been no prior disciplinary activities against Respondent's license.

7. Respondent was also convicted on March 6, 2008, for driving under the influence in violation of Penal Code section 23152, subdivision (a). This is a factor in aggravation but is not alleged as a cause for discipline. She has had no convictions since the convictions that led to this action.

8. Respondent is a recovering alcoholic whose last drink was on January 10, 2009, two months before the act that led to the conviction giving rise to this proceeding. At the time of the act, she was suffering from depression and had been taking Abilify, an anti-depressant, for two weeks. On the day she stole the television set she was feeling Aspacey@ as a result of taking Abilify. She cannot say why she stole something she did not need, but she immediately stopped taking Abilify and is now using another anti-depressant, Lexapro, prescribed by her doctor.

9. Respondent is a single mother who is the sole support of three teenage children, one of whom is in college. She actively supports her children's activities.

10. Shortly after the shoplifting event, Respondent was referred by her attorney to a firm that provides psychological counseling for persons in criminal trouble. In May 2009, she entered the firm's shoplifting program which is designed for shoplifters who act out of emotional trauma rather than for drug or alcohol reasons or to resell stolen goods. The program has two primary components, individual counseling and group therapy. The recidivism rate for clients who have completed the program is 2.9 percent. Respondent finished the initial 12 week course of group sessions and then began individual counseling

sessions with the counselor who ran the group program. Respondent also regularly attended meetings of Shoplifter=s Anonymous. At the time of the hearing she was receiving individual counseling twice a month and attending a support group twice a month.

11. Respondent has had no more urges to shoplift since March 14, 2009.

12. Respondent currently works as a salesperson with HOM Real Estate Group Inc. in Newport Beach. That work is her only source of income. Cari Jane Young, the broker of record for HOM Real Estate Group Inc., would like to continue to have Respondent work as a licensed salesperson under her brokership. She has discussed the conviction with Respondent and would like to supervise Respondent if she should receive a restricted license.

13. Ronald Millar is a licensed broker currently working as a salesperson with HOM Real Estate Group. He has been Respondent's mentor at that brokerage since she began working there. He and his wife were her friends before that time. He is confident that the shoplifting was the result of turmoil in her life at the time and that it will not happen again. In his opinion, she is now an entirely different person from the one who stole the television. He acts on that opinion. Mr. Millar's home is now on the market and Respondent shows it to prospects without either him or his wife being present.

14. Respondent is not a threat to repeat the events that led to her conviction. She is more emotionally stable, she has acquired new coping skills, she has a good support system and she has taken a series of 63 random alcohol tests that were all negative. She also attends Alcoholics Anonymous meetings five times a week. Before attending Alcoholics Anonymous she was a recluse obsessed with her problems. Now she has a close set of friends in the group and considers AA a major priority in her life.

15. Respondent is willing to work under a restricted license, knowing it will require more supervision. She is willing to follow all the terms of a restricted license.

16. Respondent attends church regularly. She is involved in a group that supports Girls Inc., which provides activities for children whose mothers work. She actively supports her teenage children=s activities.

17. Respondent admits her conviction and takes responsibility for her actions. She expressed remorse and embarrassment for her crime.

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code sections 10100 et seq. and Government Code sections 11500 through 11528.

2. The crimes of which Respondent was convicted are crimes of moral turpitude and are substantially related to the qualifications, functions or duties of a real estate salesperson in that she did an unlawful act with the intent of conferring a financial or economic benefit upon herself. (See Factual Findings 3 and 5.)

3. Pursuant to the provisions of Business and Professions Code sections 490 and 10177, subdivision (b), cause exists to suspend or revoke Respondent's real estate salesperson license in that she has been convicted of crimes that are substantially related to the qualifications, functions, or duties of a real estate salesperson licensee.

4. Respondent has satisfied several criteria of rehabilitation under California Code of Regulations, Title 10, section 2912. Although less than two years have passed since Respondent's convictions, more than two years have elapsed since the act that led to that conviction. She has had no further convictions. Respondent has made the restitution ordered by the court and paid her fine. Respondent has abstained from the use of alcohol for more than two years. Respondent has established new and different social relationships from those that existed at the time of the commission of the acts that led to the convictions in question. Respondent's family life is stable; she has fulfilled her parental and family responsibilities subsequent to the criminal conviction. Respondent is involved in a program designed to ameliorate social problems. Based on Respondent's testimony, the testimony of her marriage and family counselor, and that of her co-worker and friend, Respondent's attitude has changed since the commission of the crimes. (See Factual Findings 4, 7-11, 13 and 14.)

5. The public will be protected by the issuance of a restricted license to Respondent.

ORDER

All licenses and licensing rights of Respondent Tracy Cleland Bowie under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson 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 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 Commission 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 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.

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.

6. For two years from the effective date of this decision, Respondent shall submit quarterly reports showing that she is continuing her counseling sessions, attendance at Alcoholics Anonymous and attendance at Shoplifters Anonymous.

7. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, pos Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

Dated: May 9, 2011


ELWOOD B. HAIN, JR.
Administrative Law Judge pro tem
Office of Administrative Hearings

1 JULIE L. TO, Counsel (SBN 219482)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6916

FILED

SEP 29 2010

DEPARTMENT OF REAL ESTATE

BY: 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-36834 LA
12)
13 TRACY CLELAND BOWIE,) A C C U S A T I O N
14) Respondent.)

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16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against TRACY CLELAND BOWIE, a.k.a. Tracy Helen Cleland or Tracy
19 Helen Clelend ("Respondent") alleges as follows:

20 1.

21 The Complainant, Maria Suarez, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation
23 in her official capacity.

24 2.

25 Respondent is presently licensed and/or has license
26 rights under the Real Estate Law, Part 1 of Division 4 of the
27

1 California Business and Professions Code ("Code"), as a real
2 estate salesperson.

3 3.

4 On or about August 10, 2009, in the Superior Court of
5 the State of California, County of Orange, in Case No.
6 09CM03998, Respondent was convicted of violating Penal Code
7 Sections 459-460(b) (second degree commercial burglary), a
8 misdemeanor; 487(a) (grand theft), a misdemeanor; and 496
9 (receiving stolen property), a misdemeanor. Respondent was
10 sentenced to three years probation; 60 days in jail; and ordered
11 to pay fines and restitution.

12 4.

13 These convictions, by their facts and circumstances,
14 bear a substantial relationship under Section 2910, Title 10,
15 Chapter 6, California Code of Regulations to the qualifications,
16 functions or duties of a real estate licensee.

17 5.

18 The crime of which Respondent was convicted
19 constitutes cause under Sections 490 and 10177(b) of the Code
20 for the suspension or revocation of the license and license
21 rights of Respondent under the Real Estate Law.

22 ///
23 ///
24 ///
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26 ///
27 ///

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of
5 Respondent, TRACY CLELAND BOWIE, under the Real Estate Law (Part
6 1 of Division 4 of the Business and Professions Code) and for
7 such other and further relief as may be proper under other
8 applicable provisions of law.

9 Dated at Los Angeles, California

10 this 23rd day of September, 2010.

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12 
13 MARIA SUAREZ
14 Deputy Real Estate Commissioner
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25
26 cc: TRACY CLELAND BOWIE
27 Hom Real Estate Inc.
Maria Suarez
Sacto.