

BEFORE THE BUREAU OF REAL ESTATE

FILED

STATE OF CALIFORNIA

MAY - 9 2016

BUREAU OF REAL ESTATE

By *[Signature]*

In the Matter of the Application of)
SILVIA YESENIA SANCHEZ CARLOS,)
Respondent.)

CalBRE No. H-40059 LA
OAH No. 2016020679

DECISION

The Proposed Decision dated April 6, 2016, 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on MAY 30 2016.

IT IS SO ORDERED 5/4/2016

REAL ESTATE COMMISSIONER

[Signature]
WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Application of

SILVIA YESENIA SANCHEZ CARLOS,

Respondent.

Case No. H-40059 LA

OAH No. 2016020679

PROPOSED DECISION

This matter came on regularly for hearing on March 30, 2016, at Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Maria Suarez (Complainant) was represented by Steve Chu, Real Estate Counsel.

Silvia Yesenia Sanchez Carlos (Respondent) was present and represented herself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant brought the Statement of Issues in her official capacity as a Supervising Special Investigator of the State of California.
2. On May 20, 2013, Respondent filed with the Bureau of Real Estate, Department of Consumer Affairs, State of California (Bureau) an application for a real estate salesperson license. The license was not issued, and this action ensued.
3. On September 9, 2004, in the Superior Court of California, County of Los Angeles, in case number 43M05693, Respondent pled guilty and was convicted of violating Penal Code section 484, subdivision (a) (theft), a misdemeanor substantially related to the qualifications, functions and duties of a real estate licensee.

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4. Respondent was placed on informal probation for a period of three years under various terms and conditions including payment of fines and assessments totaling \$440, and completion of five days of community labor.

5. The facts and circumstances underlying the conviction are that Respondent and a friend stole merchandise from a Mervyn's Department Store.

6. On March 5, 2008, in the Superior Court of California, County of Orange, in case number 07NM12755 M A, Respondent pled guilty and was convicted of violating Vehicle Code sections 23152, subdivision (a) (driving under the influence), 23152, subdivision (b) (driving with a blood alcohol content of 0.08 percent or greater), 20002, subdivision (a) (hit and run), and 12500 (driving without a license), all misdemeanors substantially related to the qualifications, functions, and duties of a real estate licensee.

7. Respondent was placed on informal probation for a period of three years under various terms and conditions including incarceration in the Orange County Jail for 20 days or 20 days of Cal Trans service, payment of fines and fees totaling \$637, a prohibition against driving with any measurable amount of alcohol or drugs in her blood, and a prohibition against driving without a valid driver's license in her possession.

8. The facts and circumstances underlying the conviction are that Respondent, while unlicensed and intoxicated, left a club and attempted to drive but struck a parked car. She exited her car to look for damage on the other car and found none, but she then left without leaving a note for the other driver.

9. On April 2, 2012, in the Superior Court of California, County of Orange, in case number 12WM02880 M A, Respondent pled guilty and was convicted of violating Vehicle Code sections 23152, subdivision (a) with enhancement under section 23578 (driving under the influence), 23152, subdivision (b) (driving with a blood alcohol content of 0.08 percent or greater), and 12500, subdivision (a) (driving without a license), all misdemeanors substantially related to the qualifications, functions, and duties of a real estate licensee.

10. Respondent was placed on informal probation for a period of five years under various terms and conditions including incarceration in the Orange County Jail for 45 days with credit for five days served and five days for good conduct, payment of fines and fees totaling \$767, attendance and completion of an 18-month multiple offender alcohol program, a prohibition against driving with any measurable amount of alcohol or drugs in her blood, and a prohibition against driving without a valid driver's license in her possession.

11. The facts and circumstances underlying the conviction are that Respondent drove a motor vehicle while unlicensed and under the influence of alcohol.

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12. Respondent attributes her three criminal convictions to having been “young and dumb.” (Respondent’s terms.) Her last conviction for driving under the influence occurred when she was 25 years old. She is now almost 30 years old. During the time she was violating the law, she was associating with people who were negative influences, and she was “a little lost” (Respondent’s term) because she had recently learned that she did not have legal status in the United States. Respondent is regretful for her criminal conduct, and she no longer sees or associates with those individuals.

13. Respondent last consumed alcohol around the time of her 2012 conviction. She married in October 2013. Her husband, who is a real estate broker, has helped Respondent maintain her abstinence from alcohol by terminating his alcohol consumption in support of her sobriety. Respondent works in her husband’s office as his assistant, performing duties that do not require a real estate license. She desires to become licensed so she can become more involved in his business.

14. While incarcerated, Respondent realized that consuming alcohol “won’t make things better in the long run.” (Respondent’s testimony.) She now tries to attend Alcoholics Anonymous meetings approximately one time per month, but she is not consistent in her attendance.

15. Respondent is close with her local family. She has a special relationship with her grandmother whom she describes as “amazing.” Respondent takes her grandmother to church every Sunday.

16. Respondent’s husband owns a mortgage company, a real estate company, and an investment company through which they purchase and sell apartment buildings. He described Respondent as the smartest woman he ever met. She is crucial to everything he does, and he could not run his company without her.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent’s application for a real estate salesperson license pursuant to Business and Professions Code sections 475, subdivision (a)(2) and (3), 480, subdivision (a)(1) and (2), and 10177, subdivision (b), for conviction of crimes substantially related to the qualifications, functions and duties of the licensed activity, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10, and 11.

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2. California Code of Regulations, title 10, section 2911, sets forth the Bureau's criteria for rehabilitation to be used in determining whether an applicant is sufficiently rehabilitated to be granted the privilege of licensure. The regulation provides in pertinent part:

The following criteria have been developed by the Bureau pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the Bureau action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the Bureau.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought.

(i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

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3. Respondent has satisfied most of the Bureau's applicable criteria for rehabilitation. Although more than two years have passed since her most recent conviction, because of the number of convictions she has suffered, additional time should be considered. Respondent's most recent conviction occurred approximately four years ago. That should be a sufficient time to satisfy the criterion. Respondent's convictions have not been expunged. She has completed probation for her 2004 and 2008 convictions, but she remains on probation for her 2012 conviction. Her probation is scheduled to end in April 2017. She has paid her fines and fees. Respondent began her abstention from alcohol in 2012, approximately four years ago. She enjoys a stable and content family life with both her immediate and extended family. She attends church regularly with her grandmother. She no longer associates with the individuals with whom she associated when she was committing crimes, and she has changed her attitude from that which she embraced at that time.

4. The fact that Respondent is still on probation is troubling because individuals on probation or parole tend to be motivated to maintain good conduct in order to avoid the ramifications of a probation or parole violation. Therefore, little weight can be placed on that good behavior. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Accordingly, although Respondent is sufficiently rehabilitated to hold a restricted license, the length of the restriction must be sufficient for Respondent to demonstrate that she is fully rehabilitated and will remain so well after her probation is terminated.

ORDER

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 Section 10156.5 of the Business and Professions Code. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that 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.

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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 five 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 Bureau 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 shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. 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: April 6, 2016

DocuSigned by:
H. Stuart Waxman
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H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings