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MAR 27 2012

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-31219 LA
)	
BRENDA MARIA BURCIAGA,)	
)	
Respondent.)	
)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On September 29, 2005, a Decision was rendered herein revoking the real estate salesperson license of Respondent. Thereafter, Respondent petitioned for reinstatement and a restricted real estate salesperson license was issued to Respondent on August 27, 2008, and Respondent has operated as a restricted licensee since that time.

On or about November 1, 2010, Respondent petitioned for reinstatement of said real estate salesperson license. The Attorney General of the State of California has been given notice of the filing of Respondent's petition.

I have considered Respondent's petition and the evidence and arguments submitted in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate

1 salesperson license and that it would not be against the public interest to issue said license to
2 Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
4 reinstatement is granted and that a real estate salesperson license be issued to Respondent, if
5 Respondent satisfies the following requirements:

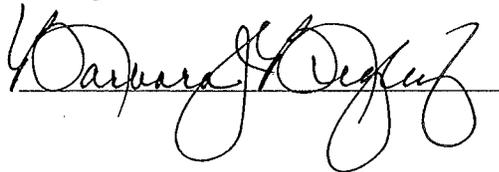
6 1. Submits a completed application and pays the fee for a real estate salesperson
7 license within the 12 month period following the date of this Order; and

8 2. Submits proof that Respondent has completed the continuing education
9 requirements for renewal of the license sought. The continuing education courses must be
10 completed either (i) within the 12 month period preceding the filing of the completed
11 application, or (ii) within the 12 month period following the date of this Order.

12 This Order shall be effective immediately.

13
14 Dated: 2/17/12

15
16 BARBARA J. BIGBY
Acting Real Estate Commissioner

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Handwritten initials/signature in the top left corner.

FILED
MAY 12 2008
DEPARTMENT OF REAL ESTATE

K. Niederholt

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-31219 LA
)
BRENDA MARIA BURCIAGA,)
)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE AND
GRANTING RIGHT TO A RESTRICTED LICENSE

On August 9, 2005, a Decision was rendered herein
revoking Respondent's real estate salesperson license.

On or about June 22, 2007, Respondent petitioned for
reinstatement of Respondent's real estate salesperson license
and the Attorney General of the State of California has been
given notice of the filing of the petition.

I have considered Respondent's petition and
the evidence and arguments in support thereof. Respondent
has failed to demonstrate to my satisfaction that Respondent
has undergone sufficient rehabilitation to warrant the
reinstatement of Respondent's real estate salesperson license,
in that:

I

1
2 In the Decision which revoked Respondent's real
3 estate license, there were Determination of Issues made that
4 there was cause to revoke Respondent's real estate license
5 pursuant to Business and Professions Code ("Code") Sections
6 490 and 10177(b).
7

8 On or about May 19, 2003, Respondent was convicted
9 of violating Penal Code Section 530.5(a) (unlawful use of
10 personal identity), a felony and a crime involving moral
11 turpitude which is substantially related to the functions,
12 qualifications and duties of a real estate licensee, pursuant
13 to Section 2910, Title 10, Chapter 6, California Code of
14 Regulations ("Regulations").
15

16 The underlying facts of said conviction were that
17 while working as a loan officer in a transaction, Respondent
18 caused a fraudulent gift letter to be prepared. Said letter
19 represented that the buyers of certain real property were
20 receiving a monetary gift. In truth and in fact, the buyers
21 had a monetary liability. The loan was approved based in part
22 on the gift letter arranged by Respondent.
23

24 II

25 The burden of proving rehabilitation rests with the
26 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541).
27 A petitioner is required to show greater proof of honesty and

1 integrity than an applicant for first time licensure. The proof
2 must be sufficient to overcome the prior adverse judgment on the
3 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
4 395).

5 The Department has developed criteria in Regulation
6 2911, to assist in evaluating the rehabilitation of an applicant
7 for reinstatement of a license. Among the criteria relevant in
8 this proceeding are:

9 2911(k) - Respondent has not shown that Respondent has
10 corrected business practices resulting in injury to others or
11 with the potential to cause such injury.

12 Given the fact that Respondent has not established
13 that Respondent has complied with Regulation 2911(k), I am not
14 satisfied that Respondent is sufficiently rehabilitated to
15 receive a real estate salesperson license.

16 NOW, THEREFORE, IT IS ORDERED that Respondent's
17 petition for reinstatement of Respondent's real estate
18 salesperson license is denied.

19 I am satisfied, however, that it will not be against
20 the public interest to issue a restricted real estate
21 salesperson license to Respondent.

22 A restricted real estate salesperson license shall
23 be issued to Respondent pursuant to Code Section 10156.5
24 if Respondent within nine (9) months from the date hereof:

25 (a) makes application therefor and pays the
26 appropriate fee for said license.

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

6 The restricted license issued to Respondent
7 shall be subject to all of the provisions of Code Section
8 10156.7 and to the following limitations, conditions and
9 restrictions imposed under authority of Code Section 10156.6:

10 1. The restricted license issued to Respondent
11 may be suspended prior to hearing by Order of the Real Estate
12 Commissioner in the event of Respondent's conviction or plea
13 of nolo contendere to a crime which is substantially related
14 to Respondent's fitness or capacity as a real estate licensee.
15

16 2. The restricted license issued to Respondent
17 may be suspended prior to hearing by Order of the Real Estate
18 Commissioner on evidence satisfactory to the Commissioner that
19 Respondent has violated provisions of the California Real
20 Estate Law, the Subdivided Lands Law, Regulations of the Real
21 Estate Commissioner or conditions attaching to the restricted
22 license.
23

24 3. Respondent shall not be eligible to apply for
25 the issuance of an unrestricted real estate license nor for
26 the removal of any of the conditions, limitations or
27

1 restrictions of a restricted license until two (2) years
2 have elapsed from the effective date of this Decision.

3
4 4. Respondent shall submit with any application for
5 license under an employing broker, or with any application for
6 transfer to a new employing broker, a statement signed by the
7 prospective employing real estate broker on a form approved by
8 the Department which shall certify:

9 (a) That the employing broker has read the Decision
10 of the Commissioner which granted the right to a restricted
11 license; and

12 (b) That the employing broker will exercise close
13 supervision over the performance by the restricted licensee
14 relating to activities for which a real estate license is
15 required.
16

17 5. Respondent must take and pass the Professional
18 Responsibility Examination administered by the Department
19 including the payment of the appropriate examination fee,
20 within 6 months form the effective date of this Order.
21

22 This Order shall become effective at 12 o'clock noon
23 on JUN - 2 2008

24 DATED: 4-22-08

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26 JEFF DAVI
Real Estate Commissioner
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FILED
SEP 29 2005
DEPARTMENT OF REAL ESTATE

By _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE NO. H-31219 LA
)	OAH NO. L-2004090405
BRENDA MARIA BURCIAGA,)	
)	
)	
Respondent.)	
)	

ORDER DENYING RECONSIDERATION

This matter came on for hearing before Mark T. Roohk, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on January 24, 2005.

BRENDA MARIA BURCIAGA (hereinafter "Respondent") appeared in person and was represented by Herman Thordsen, Esq. and Josef G. Magyar, Esq. of the Law Office of Herman Thordsen. Martha J. Rosett, Counsel, represented the Complainant, Janice Waddell, a Deputy Real Estate Commissioner for the State of California.

All evidence being received, the matter was deemed submitted for decision at that time.

1 On February 24, 2005, the Administrative Law Judge
2 submitted a Proposed Decision which I declined to adopt.

3 My Decision is set forth herein.

4 Pursuant to Section 11517(c) of the Government Code of
5 the State of California, Respondent was served with notice of my
6 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 January 24, 2005, and upon any written argument offered by
11 Respondent and Complainant. Respondent submitted written
12 argument on June 3, 2005. Complainant submitted written argument
13 on July 27, 2005.

14 On August 10, 2005, I issued my Decision After
15 Rejection in which I ordered that Respondent's real estate
16 salesperson license be revoked outright. The Decision was to
17 become effective on August 30, 2005. On August 26, 2005, the
18 Decision was stayed and now becomes effective on September 29,
19 2005.

20 I have given due consideration to the petition of
21 Respondent. I find no good cause to reconsider the Decision
22 after Rejection of August 10, 2005, and reconsideration is hereby
23 denied.

24 IT IS SO ORDERED

9-29-05
25 JEFF DAVI
26 Real Estate Commissioner
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FILED
AUG 26 2005
DEPARTMENT OF REAL ESTATE

By CB

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
BRENDA MARIA BURCIAGA,)	NO. H-31219 LA
Respondent.)	L-2004090405

ORDER STAYING EFFECTIVE DATE

On August 9, 2005, a Decision was rendered in the above-entitled matter to become effective August 30, 2005.

IT IS HEREBY ORDERED that the effective date of the Decision of August 9, 2005, is stayed for a period of 30 days to allow Respondent BRENDA MARIA BURCIAGA to file a petition for reconsideration.

The Decision of August 9, 2005, shall become effective at 12 o'clock noon on September 29, 2005.

DATED: August 26, 2005.

JEFF DAVI
Real Estate Commissioner

By: Maria Suarez for Dolores Weeks
MARIA SUAREZ for Dolores Weeks
Regional Manager

FILED
AUG 10 2005
DEPARTMENT OF REAL ESTATE


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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) DRE NO. H-31219 LA
) OAH NO. L-2004090405
BRENDA MARIA BURCIAGA,)
)
Respondent.)

DECISION AFTER REJECTION

This matter came on for hearing before Mark T. Rookh, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on January 24, 2005. BRENDA MARIA BURCIAGA (hereinafter "Respondent") appeared in person and was represented by Herman Thordsen, Esq. and Josef G. Magyar, Esq. of the Law Office of Herman Thordsen. Martha J. Rosett, Counsel, represented the Complainant, Janice Waddell, a Deputy Real Estate Commissioner for the State of California. All evidence being received, the matter was deemed submitted for decision at that time.

1 On February 24, 2005, the Administrative Law Judge
2 submitted a Proposed Decision which I declined to adopt.

3 My Decision is set forth herein.

4 Pursuant to Section 11517(c) of the Government Code of
5 the State of California, Respondent was served with notice of my
6 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
9 decided by me upon the record, the transcript of proceedings
10 held on January 24, 2005, and upon any written argument offered
11 by Respondent and Complainant. Respondent submitted written
12 argument on June 3, 2005. Complainant submitted written
13 argument on July 27, 2005.

14 I have given careful consideration to the record in
15 this case including the transcript of the proceedings of
16 January 24, 2005. I have also considered the Arguments
17 submitted by Respondent and Complainant.

18 The following shall constitute the Decision of the
19 Real Estate Commissioner in this proceeding.

20 FACTUAL FINDINGS

21
22 1. Complainant Janice Waddell, Deputy Real Estate
23 Commissioner of the State of California, made and filed the
24 Accusation in this proceeding in her official capacity
25 and not otherwise.

26 2. Respondent BRENDA MARIA BURCIAGA is licensed by
27 the Department as a real estate salesperson, license number

1 1167820. The license was originally issued in 1993.
2 Respondent's license is current, with an expiration date of
3 October 15, 2005.

4 3. The Accusation in this matter was filed on
5 August 25, 2004, and was served on Respondent. Respondent
6 timely filed a Notice of Defense contesting the charges set
7 forth therein, and this hearing followed.

8 4. On May 19, 2003, Respondent was convicted in case
9 number KA06021 1 of the Superior Court of the State of
10 California, Superior East Judicial District, County of Los
11 Angeles, on her plea of nolo contendere to one count of
12 violating Penal Code section 530.5 (a) (unlawful use of personal
13 identity), a felony. Respondent was placed on formal probation
14 for 3 years under terms and conditions including serving 180
15 days in the county jail (which could be satisfied by a similar
16 number of hours of community service), paying fines and any
17 necessary restitution, and a prohibition against participating
18 in any third party real estate transactions. (Exhibits 3B, 3D,
19 and 3E).

20 5. Respondent testified that the facts and
21 circumstances underlying her conviction were as follows:

22 Sometime in 2002, Respondent was contacted by Maria
23 Lourdes Lopez (hereinafter "Lopez"), a longtime friend of hers
24 who also worked in real estate. Lopez informed Respondent that
25 she had found buyers for a home, a married couple who would need
26 a loan in order to purchase the property. Respondent acted as
27 the loan officer in the transaction, and in the course of her

1 work discovered that the husband had a pre-existing liability,
2 specifically an automobile loan that would most likely prevent
3 the couple from qualifying for a loan on the home. Lopez told
4 Respondent that a friend of hers, Maria Martinez (hereinafter
5 "Martinez"), would be willing to act as a "donor" in the matter;
6 donors are individuals who provide money to prospective buyers
7 with pre-existing liabilities as a gift, to allow the buyers to
8 pay off those liabilities and qualify for loans. However,
9 although on paper the money would be a gift, in fact the money
10 would not be a gift, but another loan that would have to be paid
11 off by the couple. Respondent was fully aware of this fact. In
12 addition, Lopez told Respondent that Martinez would not actually
13 be providing the money herself, and that another individual
14 would be needed for that role. Respondent contacted a friend of
15 hers, who agreed to actually lend the money to the couple.

16 According to Respondent, Lopez did not inform her that
17 Martinez herself had no knowledge of the scheme. Respondent
18 says she simply assumed that Martinez knew because Lopez gave
19 Respondent all the necessary information regarding Martinez in
20 order for Respondent to process the transaction. Respondent
21 thereafter prepared a "gift letter" and signed Martinez' name to
22 it, although she had no authority to do so. The loan was
23 approved based in part on the fraudulent "gift" arranged by
24 Respondent and Lopez.

25 6. As to Respondent's sentence, she performed 180
26 days of community service in lieu of jail time, and completed
27 that service, as well as all other specific terms of probation,

1 in October 2004. Respondent subsequently filed a petition with
2 the court pursuant to Penal Code section 1203.4 to reduce her
3 conviction from a felony to a misdemeanor, and then to dismiss
4 it. Respondent's petition was granted, and her conviction was
5 expunged on December 15, 2004 (Exhibit E).

6 7. Respondent admits the facts underlying her
7 conviction, realizes what she did was wrong, and expresses
8 remorse for her actions. This is to be contrasted with the
9 statement she made to police during the investigation in late
10 2002, wherein she denied signing Martinez' name to the
11 fraudulent gift letter and indicated that she felt everything
12 was going fine because the buyers had gotten their home, were
13 making payments on both loans, and no one was getting hurt
14 (Exhibit 4).

15 8. At the time of her conviction, Respondent was
16 employed at Western Mutual Funding (hereinafter "Western").
17 Since her conviction, Respondent has remained employed at
18 Western, but now works as the office manager, due primarily to
19 her conviction and to the terms of her probation which prohibit
20 her from engaging in third party transactions. Although
21 Respondent is no longer on probation, she continues to work as
22 the office manager, and is not currently engaging in any
23 activity which requires a real estate license.

24 9. Daniel Villarreal (hereinafter "Villreal"), the
25 current owner of Western, testified on behalf of Respondent. He
26 held an ownership interest in Western at the time of
27 Respondent's misconduct, and as such is fully aware of

1 Respondent's conviction and was in fact interviewed by police
2 during the investigation. He is of the opinion that Respondent
3 has otherwise been a good employee, which is why he did not
4 terminate her employment after her conviction, that she is
5 knowledgeable and trustworthy, and believes that she was "duped"
6 by Lopez and has learned from the experience.

7 10. Socorro Martinez, the current responsible broker
8 at Western, also testified on Respondent's behalf. She was not
9 at Western at the time of Respondent's misconduct, and only was
10 made aware of the conviction a few months ago. However, she has
11 known Respondent for several years, attests to her high moral
12 character, and expresses a willingness to supervise Respondent
13 should she retain her license. Martinez also submitted a letter
14 on Respondent's behalf (Exhibit C).

15 11. Both Villarreal and Martinez testified as to the
16 quality control measures taken by Western to ensure that all
17 loan applications contain accurate information. As part of
18 these measures, Villarreal reviews every file in the office
19 prior to the submission for a loan, and Martinez reviews most of
20 the loan transactions once the file has been closed. Neither
21 Villarreal nor Martinez was aware of Respondent working on any
22 third party loan transactions since the date of her conviction.

23 12. Respondent is married with two daughters. Her
24 husband is employed as a police officer. Her daughters are both
25 involved in soccer, and Respondent volunteers her time in
26 support of their local AYSO activities. In addition, Respondent
27 also takes care of her mother, who has Alzheimer's disease. She

1 has remained current in her real estate courses, but did not
2 sign up for credit because this proceeding was still pending.
3 She denies engaging in any third party loan transactions since
4 her conviction. She no longer associates with Lopez, despite
5 effort by Lopez to contact her. Letters were submitted on
6 Respondent's behalf by two of the coordinators at the volunteer
7 center where she performed her court-ordered community service,
8 as well as by Gary Mann, Yolanda Hernandez, and Yolanda
9 Martinez, all of whom also work in the real estate profession
10 (Exhibit B). All of the authors are aware of Respondent's
11 conviction, and all attest to her good attitude, character, and
12 dedication.

13 LEGAL CONCLUSIONS

14 1. Cause exists to suspend or revoke Respondent's
15 real estate salesperson license pursuant to the provisions of
16 Business and Professions Code Sections 490 and 10177(b), for
17 conviction of a crime of moral turpitude which is substantially
18 related to the qualifications, functions, and duties of a real
19 estate licensee, as set forth in Factual Findings 4 and 5.

20 2. As a part of the regulations governing the
21 practice of real estate in the State of California, the
22 Department has developed certain criteria, set forth in the
23 California Code of Regulations, Title 10, Chapter 6, Regulation
24 2912, for the purpose of evaluating the rehabilitation of a
25 licensee against whom an administrative disciplinary proceeding
26 for revocation or suspension of the license has been initiated
27

1 on account of a conviction. A review of those criteria
2 applicable to the facts of this case reveals the following:

3 a. Respondent's conviction occurred in May 2003, just
4 over 2 years ago. This is Respondent's only conviction.

5 b. No actual restitution was required of Respondent,
6 and she has paid all fines required by her criminal sentence.

7 c. Respondent has obtained an expungement in October
8 of 2004, pursuant to Penal Code section 1203.4.

9 d. Not applicable.

10 e. Respondent's probation was terminated in October
11 of 2004, a year and a half early.

12 f. There was no indication that Respondent's
13 conviction or the circumstances leading thereto involved the use
14 or abuse of alcohol or drugs, so this factor is not applicable.

15 g. Respondent paid all fines due.

16 h. The ALJ found that Respondent's family life
17 appears stable, and she devotes some of her time to caring for
18 her ailing mother. She is married to a police officer and has
19 two daughters who are involved in soccer.

20 i. Respondent testified that she has remained current
21 in her real estate courses.

22 j. This factor would not appear to apply, as there is
23 no indication that financial difficulties, outstanding debts or
24 monetary obligations to others contributed to her criminal
25 conduct.

26 k. As ordered by the terms of her criminal probation,
27 Respondent stopped acting in the capacity of a licensee and

1 stopped handling real estate transactions as an agent during the
2 period of her probation. She continues to work in the same
3 office as an office manager. She testified that she no longer
4 associates with the individual who referred her the loan that
5 lead to her conviction, despite effort by that individual to
6 contact her.

7 1. Respondent testified that she is involved in her
8 children's soccer organization. Her probation included
9 performing 180 days of community service.

10 m. Respondent testified that she no longer associates
11 with individuals who engage in dishonest loan practices.

12 n. In terms of change in attitude, the ALJ found that
13 Respondent appears to have come to terms with her misconduct
14 since the time of her arrest, and demonstrates an improved and
15 more insightful attitude towards what she did. When interviewed
16 by police in 2002, Respondent denied certain elements of the
17 crime, specifically the fact that it was she who forged the
18 signature on the gift letter (Factual Finding 7). In 2004, when
19 she completed the Department's Conviction Detail Report, she
20 admitted the conviction, but still demonstrated some tendency
21 towards minimizing her culpability (Exhibit 5). However,
22 despite this, the ALJ found that at hearing, Respondent
23 described the circumstances of the conviction in detail, did not
24 attempt to minimize her role, and overall appeared candid and
25 sincere in her remorse.

26 3. This conviction is Respondent's only
27

1 conviction, and she has no prior record of discipline with the
2 Department. At the same time, Respondent's conviction involved
3 identity theft, which involves a substantial degree of
4 dishonesty, and occurred during the course of her licensed
5 activities. Despite Respondent's statements that she was only
6 trying to help the buyers qualify for a loan, her actions helped
7 place several individuals and entities in a position to suffer
8 financial loss and harm. The fact that no such loss or harm
9 apparently resulted is a mere fortuity.

10 Honesty and integrity are crucial among the
11 qualifications to be a real estate licensee and to handle the
12 tremendous fiduciary responsibilities such licensure carries
13 with it. Having been convicted of identity theft, the
14 circumstances of which involved dishonest dealing in a real
15 estate transaction, Respondent's character and fitness have been
16 called into question.

17 The Administrative Law Judge made it clear that the
18 Complainant met its burden in establishing that grounds exist to
19 revoke or otherwise discipline Respondent's real estate license.
20 That having been met, the degree of discipline rests solely with
21 the Commissioner (Goldie v. Fox (1979) 98 Cal.App.3d 167, 178).
22 Respondent's conviction, and the totality of the circumstances
23 surrounding it, call into question her integrity and honesty
24 necessary to carry out her fiduciary responsibilities to the
25 public. A period of longer than two years free of misconduct is
26 necessary to more fully establish rehabilitation.

27. ///

ORDER

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WHEREFORE, THE FOLLOWING ORDER is hereby made:

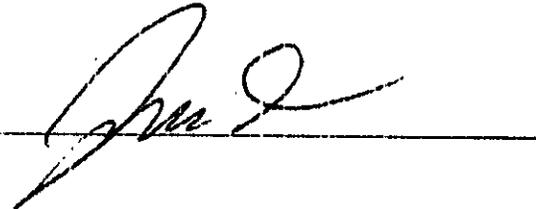
All licenses and licensing rights of Respondent BRENDA
MARIA BURCIAGA under the Real Estate Law are revoked.

This Decision shall become effective at 12 o'clock
noon on August 30, 2005.

IT IS SO ORDERED

8-9-05

JEFF DAVI
Real Estate Commissioner



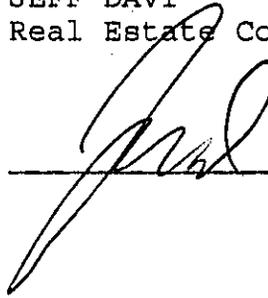
1 2005, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

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 January 24, 2005, at the Los Angeles office
6 of the Department of Real Estate unless an extension of the time
7 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: 3-22-05, 2005

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15 JEFF DAVIS
16 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BRENDA MARIA BURCIAGA,

Respondent.

Case No. H-31219 LA

OAH Case No. L2004090405 -

PROPOSED DECISION

This matter came on regularly for hearing before Mark T. Roohk, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California on January 24, 2005.

Martha J. Rosett, Real Estate Counsel, represented Complainant Janice Waddell (Complainant).

Herman Thordsen and Jozef G. Magyar, Attorneys at Law, represented Respondent Brenda Maria Burciaga (Respondent), who was present throughout the hearing.

Oral and documentary evidence was received, the matter argued, the record was closed at the conclusion of the hearing and the case submitted for decision.

FACTUAL FINDINGS

1. Complainant Janice Waddell, Deputy Real Estate Commissioner of the State of California, made and filed the Accusation in this proceeding in her official capacity and not otherwise.

2. Respondent Brenda Maria Burciaga is licensed by the Department as a real estate salesperson, license number 1167820. The license was originally issued in 1993. Respondent's license is current, with an expiration date of October 15, 2005.

3. The Accusation in this matter was filed on August 24, 2004, and was served on Respondent. Respondent timely filed a Notice of Defense contesting the charges set forth therein, and this hearing followed.

4. On April 4, 2003, Respondent was convicted in case number KA060211 of the Superior Court of the State of California, Superior East Judicial District, County of Los Angeles, on her plea of nolo contendere to one count of violating Penal Code section 530.5, subdivision (a) (unlawful use of personal identity), a felony. Respondent was placed on formal probation for 3 years under terms and conditions including serving 180 days in the county jail (which could be satisfied a similar number of hours of community service), paying fines and any necessary restitution, and a prohibition against participating in any third party real estate transactions. (Exhibits 3B, 3D, and 3E.)

5. The facts and circumstances underlying Respondent's conviction are as follows: Sometime in or around early 2002, Respondent was contacted by Maria Lourdes Lopez, a longtime friend of hers who also worked in real estate. Lopez informed Respondent that she had found buyers for a home, a married couple who would need a loan in order to purchase the property. Respondent acted as the loan officer in the transaction, and in the course of her work discovered that the husband had a pre-existing liability, specifically an automobile loan that would most likely prevent the couple from qualifying for a loan on the home. Lopez told Respondent that a friend of hers, Maria Martinez, would be willing to act as a "donor" in the matter; donors are individuals who provide money to prospective buyers with pre-existing liabilities as a gift, to allow the buyers to pay off those liabilities and qualify for loans. However, although on paper the money would be a gift, in fact the money would not be a gift, but another loan that would have to be paid off by the couple. Respondent was fully aware of this fact. In addition, Lopez told Respondent that Martinez would not actually be providing the money herself, and that another individual would be needed for that role. Respondent contacted a friend of hers, who agreed to actually lend the money to the couple.

Lopez did not inform Respondent that Martinez herself had no knowledge of the scheme. Respondent simply assumed that Martinez knew because Lopez gave Respondent all the necessary information regarding Martinez in order for Respondent to process the transaction. Respondent thereafter prepared a "gift letter" and signed Martinez's name to it, although she had no authority to do so. The loan was approved based in part on the fraudulent "gift" arranged by Respondent and Lopez.

6. As to Respondent's sentence, she performed 180 days of community service in lieu of jail time, and completed that service, as well as all other specific terms of probation, in October 2004. Respondent subsequently filed a petition with the court pursuant to Penal Code section 1203.4 to reduce her conviction from a felony to a misdemeanor, and then to dismiss it. Respondent's petition was granted, and her conviction was expunged on December 15, 2004. (Exhibit E.)

7. Respondent admits the facts underlying her conviction, realizes what she did was wrong, and expresses remorse for her actions. This is to be contrasted with the

statement she made to police during the investigation in late 2002, wherein she denied signing Martinez's name to the fraudulent gift letter and indicated that she felt everything was going fine because the buyers had gotten their home, were making payments on both loans, and no one was getting hurt. (Exhibit 4.)

8. At the time of her conviction, Respondent was employed at Western Mutual Funding (Western). Since her conviction, Respondent has remained employed at Western, but now works as the office manager, due primarily to her conviction and to the term of her probation which prohibited her from engaging in third party transactions. Although Respondent is no longer on probation, she continues to work as the office manager, and is not currently engaging in any activity which requires a real estate license.

9. Daniel Villarreal, the current owner of Western, testified on behalf of Respondent. He held an ownership interest in Western at the time of Respondent's misconduct, and as such is fully aware of Respondent's conviction and was in fact interviewed by police during the investigation. He is of the opinion that Respondent has otherwise been a good employee, which is why he did not terminate her employment after her conviction, that she is knowledgeable and trustworthy, and believes that she was "duped" by Lopez and has learned from the experience.

10. Socorro Martinez, the current responsible broker at Western, also testified on Respondent's behalf. She was not at Western at the time of Respondent's misconduct, and only was made aware of the conviction a few months ago. However, she has known Respondent for several years, attests to her high moral character, and expresses a willingness to supervise Respondent should she retain her license. Martinez also submitted a letter on Respondent's behalf. (Exhibit C.)

11. Both Villarreal and Martinez testified as to the quality control measures taken by Western to ensure that all loan applications contain accurate information. As part of these measures, Villarreal reviews every file in the office prior to the submission for a loan, and Martinez reviews most of the loan transactions once the file has been closed. Neither Villarreal nor Martinez is aware of Respondent working on any third party loan transactions since the date of her conviction.

12. Respondent is married with two daughters. Her husband is employed as a police officer. Her daughters are both involved in soccer, and Respondent volunteers her time in support of their local AYSO activities. In addition, Respondent also takes care of her mother, who has Alzheimer's disease. She has remained current in her real estate courses, but did not sign up for credit because this proceeding was still pending. She denies engaging in any third party loan transactions since her conviction. She no longer associates with Lopez, despite effort by Lopez to contact her. Letters were submitted on Respondent's behalf by two of the coordinators at the volunteer center where she performed her court-ordered community service, as well as by Gary Mann, Yolanda Hernandez, and Yolanda Martinez, all of whom also work in the real estate profession. (Exhibit B.) All of the authors are aware of Respondent's conviction, and all attest to her good attitude, character, and dedication.

LEGAL CONCLUSIONS

Cause exists to suspend or revoke Respondent's real estate salesperson license pursuant to the provisions of Business and Professions Code sections 490 and 10177, subdivision (b), for conviction of a crime substantially related to the qualifications, functions, and duties of a real estate license, as set forth in Factual Findings 4 and 5.

As a part of the regulations governing the practice of real estate in the State of California, the Department has developed certain criteria, set forth in the California Code of Regulations, title 10, section 2912, for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a conviction.

A review of those criteria applicable to the facts of this case reveals the following:

A. The Guidelines recommend the passage of not less than two years since the most recent criminal conviction that is substantially related to the qualifications, functions, and duties of a real estate license. Respondent's conviction occurred in April 2003, less than 2 years ago. However, this is Respondent's only conviction.

B. The Guidelines recommend considering payment of restitution and any fines imposed in connection with conviction. No actual restitution was required of Respondent, and she has paid all fines required by her criminal sentence.

C. The Guidelines recommend considering expungement of Respondent's conviction, or successful completion or early discharge from probation or parole. Respondent successfully completed her probation over a year ahead of schedule, and has already obtained an expungement pursuant to Penal Code section 1203.4.

D. The Guidelines recommend considering correction of business practices which contributed to the conviction. Since her conviction, Respondent has not engaged in any loan transactions, even though she is no longer prohibited from doing so. She has also ended her association with her co-defendant who helped initiate the scheme that resulted in the conviction.

E. The Guidelines recommend considering new and different social relationships from those which existed at the time of the conviction. As noted above, Respondent no longer associates with her co-defendant in the scheme.

F. The Guidelines recommend considering stability of family life and fulfillment of familial responsibilities. Respondent's family life appears stable, and she devotes some of her time to caring for her ailing mother.

G. The Guidelines recommend considering involvement in community activities. Respondent acts as a volunteer in the local youth soccer program in which her daughters participate.

The Guidelines also recommend evaluating several factors relating to changes in the licensee's attitude since the time of the conviction. Based on the evidence presented, Respondent appears to have come to terms with her misconduct since the time of her arrest, and demonstrates an improved and more insightful attitude towards what she did. When interviewed by police in 2002, Respondent denied certain elements of the crime, specifically the fact that it was she who forged the signature on the gift letter. (Factual Finding 7.) In 2004, when she completed the Department's Conviction Detail Report, she admitted the conviction, but still demonstrated some tendency towards minimizing her culpability. (Exhibit 5.) At the hearing, however, Respondent described the circumstances of the conviction in detail, did not attempt to minimize her role, and overall appeared candid and sincere in her remorse.

A review of the guidelines establishes that Respondent has satisfied many of them. The most notable exception is the fact that less than 2 years have elapsed since the actual conviction occurred. However, Respondent completed her probation in little more than half the imposed time of 3 years, which included performing 180 days of community service, and has already had her conviction expunged. Further, this is Respondent's only conviction, and she has no prior record of discipline with the Department.

At the same time, Respondent's conviction involved identity theft, which involves a substantial degree of dishonesty, and occurred during the course of her licensed activities. Despite Respondent's statements that she was only trying to help the buyers qualify for a loan, her actions helped placed several individuals and entities in a position to suffer financial loss and harm. The fact that no such loss or harm apparently resulted is a mere fortuity.

As always, the most important consideration in determining license discipline is the protection of the public interest. Given Respondent's history of conduct before and after the circumstances underlying her conviction, it appears most likely that what Respondent did was more an aberration than the routine. Accordingly, revocation of Respondent's real estate license to ensure protection of the public interest is not required in this case. However, because of the nature of Respondent's conviction, and the relative recency of that conviction, her license should be restricted, including a period of suspension.¹

ORDER

The licenses and licensing rights of Respondent Brenda Maria Burciaga 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 therefore and pays to the Department

¹ Complainant expresses concern regarding the degree of supervision present at Respondent's place of employment. However, Complainant offers no evidence as to why the *current* degree of supervision is not adequate to ensure Respondent will not have an opportunity to repeat her misconduct if she is so inclined to do so.

not adopted

of Real Estate the appropriate fee for the restricted license within 90 days of the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. All licenses and licensing rights of Respondent under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Decision.

2. 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.

3. 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.

4. 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.

5. 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 broker on a form approved by the Department of Real Estate, which shall certify:

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

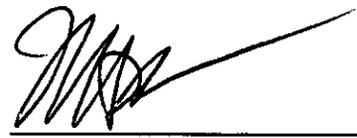
b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of activities for which a real estate license is required.

6. 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 renewed real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent presents such

*Not
Adopted*

evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: 2/29/05



MARK T. ROOHK
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 BRENDA MARIA BURCIAGA,)
)
 _____)
 Respondent(s)

Case No. H-31219 LA
OAH No. L-2004090405

FILE
JAN 13 2005
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, JANUARY 24, 2005, 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: January 13, 2005

By Martha J. Rosett
MARTHA J. ROSETT, Counsel

cc: Brenda Maria Burciaga
Jozef G. Magyar, Esq.
Western Mutual Funding
Sacto.
OAH

4AC

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 BRENDA MARIA BURCIAGA,)
)
)
 _____)
 Respondent(s)

Case No. H-31219 LA

OAH No. L-2004090405

FILED
NOV - 1 2004
DEPARTMENT OF REAL ESTATE

NOTICE OF 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 TUESDAY, DECEMBER 21, 2004, at the hour of 11:00 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.

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DEPARTMENT OF REAL ESTATE

Dated: November 1, 2004

By


MARTHA J. ROSETT, Counsel

cc: Brenda Maria Burciaga
Jozef G. Magyar, Esq.
Western Mutual Funding
Sacto.
OAH

1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
3 320 West Fourth St., #350
4 Los Angeles, CA 90013-1105

5 (213) 576-6982
6 (213) 576-6907

FILED
AUG 25 2004
DEPARTMENT OF REAL ESTATE

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) No. H-31219 LA
12)
13 BRENDA MARIA BURCIAGA,) A C C U S A T I O N
14 Respondent.)
15)

16 The Complainant, Janice Waddell, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against BRENDA MARIA BURCIAGA, aka Brenda Burciaga, Brenda M.
19 Burciaga, and Brenda Jacoby (hereinafter "Respondent") is
20 informed and alleges as follows:

21 1.

22 The Complainant, Janice Waddell, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation in
24 her official capacity.

25 2.

26 At all times herein mentioned, Respondent was and still
27 is licensed and/or has license rights under the Real Estate Law

1 (Part 1 of Division 4 of the Business and Professions Code,
2 hereinafter "Code"). At all times mentioned herein, Respondent
3 was licensed as a real estate salesperson. Respondent was first
4 licensed by the Department on or about September 20, 1993.

5 3.

6 On or about May 19, 2003, in the Superior Court of Los
7 Angeles, Superior East Judicial District, County of Los Angeles,
8 State of California, in Case No. KA060211, Respondent was
9 convicted of violating Penal Code Section 530.5(a) (unlawful use
10 of personal identity), a felony crime of moral turpitude which is
11 substantially related to the qualifications, functions and duties
12 of a real estate licensee pursuant to Title 10, Chapter 6 of the
13 California Code of Regulations, Regulations 2910(a)(1), (4), and
14 (8). Respondent was sentenced to formal probation for three
15 years, the terms of which included 180 days in jail (can be
16 served by community service), a fine of \$200.00, and restitution
17 to the victims in an amount to be determined by the probation
18 officer. Respondent was also ordered not to participate in any
19 third party real estate or loan transactions.

20 4.

21 Respondent's conviction, as set forth in Paragraph 3
22 above, constitutes grounds to suspend or revoke Respondent's real
23 estate license and license rights pursuant to Code Sections
24 10177(b) and 490.

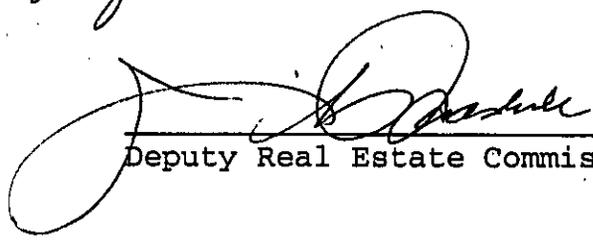
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1 WHEREFORE, the Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondent
5 BRENDA MARIA BURCIAGA under the Real Estate Law and for such
6 other and further relief as may be proper under applicable
7 provisions of law.

8 Dated at Los Angeles, California
9 this 24 day of August, 2004.

10
11 
12 _____
13 Deputy Real Estate Commissioner
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18
19
20
21
22
23

24
25 cc: Brenda Maria Burciaga
26 Western Mutual Funding/Dick George Dulgarian
27 Sacto.
Janice Waddell
DW