

FILED
JUN 21 2004
DEPARTMENT OF REAL ESTATE

By K. K. K. K. K.

In the Matter of the Application of

No. H-1659 FR

STIPULATION AND WAIVER

Respondent

Respondent acknowledges that Respondent has received and read the Statement of Issues and the Statement to Respondent filed by the Department of Real Estate in connection with Respondent's application for a real estate salesperson license. Respondent understands that the Real Estate Commissioner may hold a hearing on this Statement of Issues for the purpose of requiring further proof of Respondent's honesty and truthfulness and to prove other allegations therein, or that he/she may in his/her discretion waive the hearing and grant Respondent a restricted real estate salesperson license based upon this Stipulation and Waiver. Respondent also understands that by filing the Statement of Issues in this matter the Real Estate Commissioner is shifting the burden to Respondent to make a satisfactory showing that Respondent meets all the requirements for issuance of a real estate salesperson license. Respondent further

1 understands that by entering into this stipulation and waiver Respondent will be stipulating that the Real
2 Estate Commissioner has found that Respondent has failed to make such a showing, thereby justifying the
3 denial of the issuance to Respondent of an unrestricted real estate salesperson license.

4 Respondent hereby admits that the allegations of the Statement of Issues filed against Respondent are
5 true and correct and requests that the Real Estate Commissioner in his/her discretion issue a restricted real
6 estate salesperson license to Respondent under the authority of Section 10156.5 of the Business and
7 Professions Code. Respondent understands that any such restricted license will be issued subject to and be
8 limited by Section 10153.4 of the Business and Professions Code.

9 Respondent is aware that by signing this Stipulation and Waiver, Respondent is waiving Respondent's
10 right to a hearing and the opportunity to present evidence at the hearing to establish Respondent's
11 rehabilitation in order to obtain an unrestricted real estate salesperson license if this Stipulation and Waiver
12 is accepted by the Real Estate Commissioner. However, Respondent is not waiving Respondent's right to a
13 hearing and to further proceedings to obtain a restricted or unrestricted license if this Stipulation and
14 Waiver is not accepted by the Commissioner.

15 Respondent further understands that the following conditions, limitations, and restrictions will attach
16 to a restricted license issued by the Department of Real Estate pursuant hereto:

- 17 1. The license shall not confer any property right in the privileges to be exercised including the
18 right of renewal, and the Real Estate Commissioner may by appropriate order suspend the right
19 to exercise any privileges granted under this restricted license in the event of:
 - 20 a. The conviction of Respondent (including a plea of nolo contendere) to a crime which bears
21 a substantial relationship to Respondent's fitness or capacity as a real estate licensee; or
 - 22 b. The receipt of evidence that Respondent has violated provisions of the California Real
23 Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or
24 conditions attaching to this restricted license.
- 25 2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license
26 nor the removal of any of the conditions, limitations or restrictions attaching to the restricted
27

1 license until two years have elapsed from the date of issuance of the restricted license to
2 Respondent.

- 3 3. With the application for license, or with the application for transfer to a new employing broker,
4 Respondent shall submit a statement signed by the prospective employing broker on a form
5 approved by the Department of Real Estate wherein the employing broker shall certify as
6 follows:

- 7 a. That broker has read the Statement of Issues which is the basis for the issuance of the
8 restricted license; and
9 b. That broker will carefully review all transaction documents prepared by the restricted
10 licensee and otherwise exercise close supervision over the licensee's performance of acts
11 for which a license is required.

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

- 23 5. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified
24 license under Section 10153.4, Respondent shall not be entitled to renew the restricted license,
25 and shall not be entitled to the issuance of another license which is subject to Section 10153.4
26 until four years after the date of the issuance of the preceding restricted license.
27

1 _____
2 Dated

ELLIOTT MAC LENNAN, Counsel, Department of Real Estate

3 * * *

4 I have read the Stipulation and Waiver, have discussed it with my counsel, and its terms are
5 understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me
6 by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509,
7 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights,
8 including the right of a hearing on the Statement of Issues at which I would have the right to cross-examine
9 witnesses against me and to present evidence in defense and mitigation of the charges.

10 Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and
11 Waiver by faxing a copy of the signature page, as actually signed by respondent, to the Department at fax
12 number (213) 576-6917. Respondent agrees, acknowledges and understands that by electronically sending
13 to the Department a fax copy of her actual signature as it appears on the Stipulation and Waiver, that receipt
14 of the faxed copy by the Department shall be as binding on Respondent as if the Department had received
15 the original signed Stipulation and Waiver.

16 _____
17 Dated

AMARIS AUSLENDER DUNCAN, Respondent

18 *I have reviewed the Stipulation and Waiver as to form and content and have advised my client*
19 *accordingly.*

20 _____
21 Dated

THOMAS C. LASKEN, Attorney for Respondent

S-20-04

Dated

ELLIOTT MAC LENNAN, Counsel, Department of Real Estate

* * *

I have read the Stipulation and Waiver, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of a hearing on the Statement of Issues at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation and Waiver by faxing a copy of the signature page, as actually signed by respondent, to the Department at fax number (213) 576-6917. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of her actual signature as it appears on the Stipulation and Waiver, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Waiver.

May 19, 2004

Dated

Amaris Auslander Duncan

AMARIS AUSLANDER DUNCAN, Respondent

I have reviewed the Stipulation and Waiver as to form and content and have advised my client accordingly.

May 19, 2004

Dated

Thomas C. Lasken

THOMAS C. LASKEN, Attorney for Respondent

I have read the Statement of Issues filed herein and the foregoing Stipulation and Waiver signed by Respondent. I am satisfied that the hearing for the purpose of requiring further proof as to the honesty and truthfulness of Respondent need not be called and that it will not be inimical to the public interest to issue a restricted real estate salesperson license to Respondent.

Therefore, IT IS HEREBY ORDERED that a restricted real estate salesperson license be issued to Respondent, if Respondent has otherwise fulfilled all of the statutory requirements for licensure. The restricted license shall be limited, conditioned, and restricted as specified in the foregoing Stipulation and Waiver.

This Order is effective immediately.

IT IS SO ORDERED

June 16, 2004.



JOHN R. LIBERATOR
Acting Real Estate Commissioner

Sacto
2/29

BEFORE THE DEPARTMENT OF REAL ESTATE 2004
STATE OF CALIFORNIA

FILED
MAY 3 2004
DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

By *K. Medichols*

AMARIS AUSLENDER-DUNCAN,

}

Case No. H-1659 FR

OAH No. L-2004040066

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 **Santa Maria Government Center, 511 East Lakeside Parkway, Santa Maria, CA 93455** on **May 21, 2004**, 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 are 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

Dated: MAY - 3 2004

By *ELL*
ELLIOTT MAC LENNAN, Counsel

cc: Amaris Auslander-Duncan
Thomas C. Lasken, Esq.
.Sacto/OAH/SY

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6 Telephone: (916) 227-0789

FILED
JAN 28 2004

DEPARTMENT OF REAL ESTATE

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8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13 AMARIS AUSLENDER-DUNCAN,) NO. H-1659 FR
14 Respondent.) STATEMENT OF ISSUES
15)

16 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against AMARIS AUSLENDER-DUNCAN (hereinafter "Respondent"), is
19 informed and alleges as follows:

20 I

21 Respondent made application to the Department of Real
22 Estate of the State of California for a real estate salesperson
23 license on or about January 10, 2003, with the knowledge and
24 understanding that any license issued as a result of said
25 application would be subject to the conditions of Section 10153.4
26 of the Business and Professions Code.

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1 II

2 Complainant, JOHN W. SWEENEY, a Deputy Real Estate
3 Commissioner of the State of California, makes this Statement
4 of Issues in his official capacity and not otherwise.

5 III

6 On or about October 16, 1997, in the Superior Court,
7 County of Santa Barbara in Case No. 220655, Respondent was
8 convicted of a violation of Section 487(a) of the California
9 Penal Code (Theft), a crime involving moral turpitude which
10 bears a substantial relationship under Section 2910, Title 10,
11 California Code of Regulations, to the qualifications, functions,
12 or duties of a real estate licensee.

13 IV

14 On or about October 16, 1997, in the Superior Court,
15 County of Santa Barbara in Case No. 220661, Respondent was
16 convicted of a violation of Section 11377(a) of the California
17 Health and Safety Code (Possession for Sale of Controlled
18 Substance), a crime involving moral turpitude which bears a
19 substantial relationship under Section 2910, Title 10, California
20 Code of Regulations, to the qualifications, functions, or duties
21 of a real estate licensee.

22 V

23 On or about June 21, 2000, in the Superior Court,
24 County of Santa Barbara in Case No. 476935,, Respondent was
25 convicted of a violation of Section 476(a) of the California
26 Penal Code (Insufficient Funds Checks), a crime involving moral
27 turpitude which bears a substantial relationship under Section

1 2910, Title 10, California Code of Regulations, to the
2 qualifications, functions, or duties of a real estate licensee.

3 VI

4 The crimes of which Respondent was convicted, as
5 alleged in Paragraphs III, IV, and V, constitute cause for denial
6 of Respondent's application for a real estate license under
7 Sections 480(a) and/or 10177(b) of the California Business and
8 Professions Code.

9 WHEREFORE, the Complainant prays that the above-
10 entitled matter be set for hearing and, upon proof of the charges
11 contained herein, that the Commissioner refuse to authorize the
12 issuance of, and deny the issuance of, a real estate salesperson
13 license to Respondent, and for such other and further relief as
14 may be proper under other provisions of law.

15
16
17
18 
19 JOHN W. SWEENEY
20 Deputy Real Estate Commissioner
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22 Dated at Fresno, California,
23 this 17th day of November, 2003.
24
25
26
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