

FILED
AUG 15 2005

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

* * *

By *Ann Sharan*

In the Matter of the Application of)
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 ROSA LINDA APPODACA)
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 Respondent.)
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NO. H-1770 FR
OAH NO. L-2005040414

DECISION

The Proposed Decision dated August 2, 2005, 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. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon
on September 6, 2005.

IT IS SO ORDERED 8-10, 2005.

JEFF DAVI
Real Estate Commissioner

Jeff Davi

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

ROSA LINDA APPODACA,

Respondent.

Case No. H-1770 FR

OAH No. N2005040414

PROPOSED DECISION

Administrative Law Judge M. Amanda Behe, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on June 20, 2005.

Truly Sughrue, Counsel, represented the complainant.

Respondent represented herself.

The matter was submitted on June 20, 2005.

FACTUAL FINDINGS

1. John W. Sweeney is a Deputy Real Estate Commissioner of the State of California Department of Real Estate (the Department) and made and filed the Statement of Issues in his official capacity.

2. On April 30, 2004, Rosa Linda Appodaca (respondent) applied to the Department for a real estate salesperson license pursuant to Business and Professions Code section 10153.3. Any license issued as a result of that application would be subject to the conditions of Business and Professions Code section 10153.4.

3. Business and Professions Code section 480 provides that:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

4. Business and Professions Code section 10177 provides that:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

...

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation

following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

5. On April 22, 1999, in the Superior Court, County of San Luis Obispo, State of California, respondent was convicted on her plea of guilty of violation of Penal Code section 487(Grand Theft), a crime involving moral turpitude. The crime of which respondent was convicted is substantially related to the qualifications, functions and duties of the licensed activity. She was sentenced to one year and four months in state prison, with credit for time served, and ordered to make restitution in the amount of \$27,105.

The circumstances of the crime were that, while employed by Quality Property Management, respondent altered financial records to indicate that tenants had paid their rent when in fact they were substantially in arrears. Respondent was motivated by sympathy for the tenants, and did not take money for her personal benefit but to keep the tenants from being evicted.

6. Respondent's criminal conviction is substantially related to the qualifications, functions and duties of the licensed activity pursuant to California Code of Regulations, title 10, section 2910, subdivision (a) (2), in that the criminal acts involved uttering of a false statements. Respondent's criminal conviction is substantially related to the qualifications, functions and duties of the licensed activity pursuant to California Code of Regulations, title 10, section 2910, subdivision (a) (4), in that the criminal acts involved the employment of deceit, falsehood or misrepresentation to achieve an end.

7. The Department's criteria for rehabilitation in California Code of Regulations, title 10, section 2912 have been considered with regard to respondent's application. Respondent persuasively testified that she made a mistake to falsify books to help needy tenants, and her imprisonment was a traumatizing experience. Since her release she has been employed in property management work for Realty Dimensions in Bakersfield. She has never resumed the business practices which led to her conviction, and credibly testified that she would not because she realizes it was wrong to mislead her employer. In addition to her changed attitude, respondent no longer associates with the individuals who were involved in past offense.

Six years have passed since respondent's criminal conviction. She served eleven of the required sixteen months in prison, was released early for good time credits on November 3, 1999. Although originally scheduled to be on parole for three years she was released after one year in November 2000. Respondent has paid \$15,500 of the ordered restitution and is making regular payments of \$550 per month.

Respondent had been married for 24 years and has children ages 24, 19, and 10. Her imprisonment was traumatic and embarrassing for her and her family. Respondent's husband and children have been a continuing source of support and love. She has worked dur-

ing her marriage, and contributes to the support of her family. She hopes to obtain a license to further her career and purchase a home for her family.

Respondent is busy with her job and family and has not taken any formal educational or vocational training courses since her release. She would have no difficulty taking the courses required of Department licensees.

Respondent is an active member of Christ Cathedral in Bakersfield. The letter of Pastor Clyde Wasdin noted respondent's leadership roles in the Women's' Ministry and Youth Department, as well as her faithful attendance.

8. In August 2000 respondent was hired as a resident apartment manager for Realty Dimensions in Bakersfield. That firm's broker, Melody Blain, wrote that respondent was honest and forthright about her past actions and resulting conviction. Ms. Blain closely supervised respondent, and found her diligent, honest and capable. She promoted respondent to Office Manager of the firm in November 2003. Respondent handles payroll, does bank reconciliations with the firm's CPA, and meets weekly with property supervisors. Ms. Blain wrote that respondent has since managed the office with little supervision and is a signer on her personal and payroll checking accounts. Ms. Blain opined that respondent "has proven to be a woman of integrity and successful in managerial skills."

Respondent's colleague at Realty Dimensions, Jennifer Sparks, wrote that respondent is "a person of integrity, as well as reliable and knowledgeable in all aspects of commercial as well as residential property management." Ms. Sparks has known respondent for three years at work and through their church.

Broker Alexander Carrassi, President of Red Sun Realty, has dealt with respondent on property management matters. He wrote that she is professional, trustworthy, and very knowledgeable, and recommended that she be licensed by the Department.

LEGAL CONCLUSIONS

Cause for denial of respondent's application for a real estate salesperson's license was established pursuant to Business and Professions Code section 480 and section 10177, subdivision (b).

Respondent presented substantial and persuasive evidence of her rehabilitation. The public interest would be protected by the issuance of a restricted license.

ORDER

The application of respondent Rosa Linda Appodaca 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 said Code:

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

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

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

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

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

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

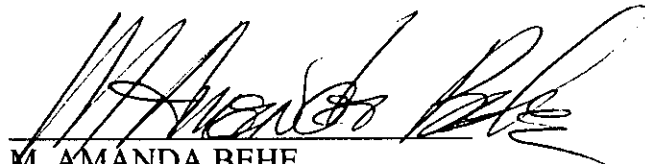
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

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

course completion and the Commissioner has given written notice to respondent of lifting of the suspension.

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

Dated: August 2, 2005


M. AMANDA BEHE
Administrative Law Judge
Office of Administrative Hearings

FILED
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DEPARTMENT OF REAL ESTATE

By JWS

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No. H-1770 FR
12 ROSA LINDA APPODACA,) STATEMENT OF ISSUES
13 Respondent.)

14
15 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against ROSA LINDA APPODACA (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about April 30, 2004, with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section 10153.4
25 of the Business and Professions Code.

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II

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

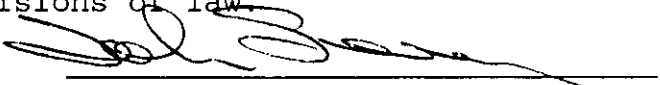
III

On or about April 22, 1999, in the Superior Court, County of San Luis Obispo, Respondent was convicted of a violation of Section 487(A) of the California Penal Code (Grand Theft), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, as alleged above, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

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


JOHN W. SWEENEY
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 5th day of April, 2005.