

APR 24 2001

By Shelly Ely

* * *

No. H-2300 SD

On February 28, 2000, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

- 1 -

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate
6 salesperson license and that it would not be against the public
7 interest to issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for reinstatement is granted and that a real estate
10 salesperson license be issued to Respondent if Respondent
11 satisfies the following conditions within nine months from the
12 date of this Order:

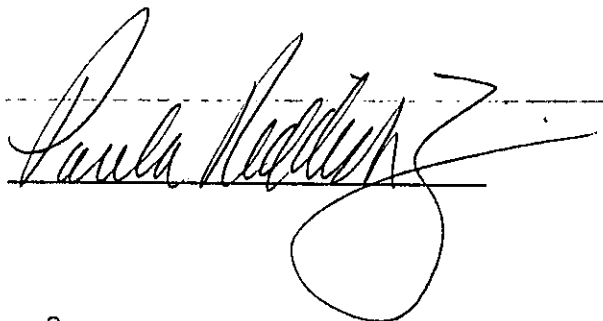
13 1. Submittal of a completed application and payment of
14 the fee for a real estate salesperson license.

15 2. Submittal of evidence of having, since the most
16 recent issuance of an original or renewal real estate license,
17 taken and successfully completed the continuing education
18 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
19 for renewal of a real estate license.

20 This Order shall be effective immediately.

21 DATED: April 9, 2001

23 PAULA REDDISH ZINNEMANN
24 Real Estate Commissioner

25 
26
27

John Lundberg

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
NOUSHIN BERJIS,)	DRE No. H-2300 SD
Respondent.)	OAH No. L-1997050281
_____)	

PROPOSED DECISION

On September 5, 1997, James Ahler, Administrative Law Judge, heard this matter in San Diego.

Elliott Mac Lennan, Counsel, represented complainant J. Chris Graves, Deputy Real Estate Commissioner, Department of Real Estate (hereafter the Department).

Noushin Berjis (hereafter respondent) represented himself in propria persona.

The record was opened and jurisdictional documents were presented. Oral and documentary evidence was received. Brief closing statements were given and the record was closed.

The matter was submitted on September 5, 1997.

FINDINGS OF FACT

I

On April 10, 1997, J. Chris Graves, a Deputy Real Estate Commissioner, signed the Accusation in his official capacity.

II

Respondent is a thirty-four year old resident of La Jolla, San Diego County. Respondent and her family immigrated to the United States from Iran in the late 1970's.

Respondent graduated from La Jolla High School in 1980. She was awarded a Bachelor of Science degree in Finance and Business Administration from San Diego State University in 1985. She was awarded a Masters of Business Administration from San Diego State University in 1988.

Respondent is married to a thirty-four year old engineer. Respondent and her husband are the parents of a four year old son. Respondent and her family reside in La Jolla.

When respondent was an undergraduate at San Diego State University, she began working as a copy clerk for Judith A. Dunham, now the President/Broker of American Mortgage Express. Respondent quickly learned about the mortgage business and decided to obtain a real estate salesperson's license.

III

On September 13, 1985, the Department first issued respondent a real estate salesperson's license. Respondent was employed by American Mortgage Express, employment which has lasted more than eleven years.

Respondent is currently a loan officer. She has one principal client which, in turn, services approximately sixty individuals and entities. Respondent is responsible for obtaining loan information from clients, completing loan documents, marketing loans, and assisting her clients and broker as required. She enjoys her work. Her broker describes respondent as being "most dependable, trustworthy and professional."

There is no history of administrative discipline against respondent's real estate salesperson's license.

Respondent's license expires on September 12, 1997, unless suspended or revoked.

IV

On July 20, 1995, respondent was convicted, on her plea of nolo contendere, of petty theft, in violation of Penal Code section 484/488, in the Municipal Court of California, County of San Diego, San Diego Judicial District, in that matter entitled People of the State of California v. Nooshin Berjis, bearing Case No. M 700015. Respondent was placed on three years summary probation, was sentenced to serve one day in custody, was given credit for one day of custody as a result of having been booked and released, was ordered to perform eighty hours of community work, was ordered to pay a \$300 fine, was ordered to pay \$200 restitution to Nordstroms, was ordered not to commit the same or similar offense, and was ordered not to violate any law. Respondent served eighty hours of public service by serving food to the homeless at the Interfaith Shelter.

Respondent complied with all terms and conditions of probation. On August 20, 1997, respondent's motion to terminate her summary probation was granted. Respondent is no longer on probation.

V

Respondent's criminal conviction arose out of an incident occurring on May 6, 1995. Respondent and a friend, Abbasesh Samimi (hereafter Samimi), entered the Nordstroms Rack. While inside the department store, respondent agreed to participate in Samimi's scheme in which respondent would take possession of two pairs of shoes similar to two pairs of shoes she purchased the previous week, have Samimi place the shoes in an empty Nordstroms shopping bag, and thereafter obtain credit for returning shoes respondent would represent she purchased two weeks before. Central to this planned misconduct was respondent's possession of a receipt for the shoes she purchased two weeks before for \$150.

Respondent and Samimi were caught after attempting to obtain the fraudulent credit. Respondent was booked and released. Her conviction followed.

VI

Theft is a crime involving moral turpitude. In re Honoroff (1975) 15 Cal.3d 755.

A crime involving moral turpitude bears a substantial and adverse relationship to the qualifications, functions, and duties of a real estate salesperson, who is required to be truthful and forthright in transactions involving the financing, purchase, and sale of real property and who must resist the suggestion by others that they engage in wrongdoing.¹

VII

Respondent has no other criminal convictions. The act underlying her criminal conviction is over two years old. Respondent made restitution and paid all fines ordered by the court. Respondent successfully petitioned for termination of her probation.

¹ Title 10, California Code of Regulations, section 2910 also provides a crime involving the employment of a falsehood or misrepresentation to achieve an end is substantially and adversely related to the qualifications, functions, or duties of a Department licensee.

Respondent is embarrassed and remorseful regarding her conviction. Respondent recognizes her conduct was wrong, although she tends to minimize the extent of her involvement in the misconduct occurring at Nordstroms.

Respondent's license has never been disciplined. Her employment is very stable and she is in a position where her employer can carefully monitor her professional activities.

Respondent's marriage and home life are intact and stable.

It appears the circumstances leading to respondent's criminal conviction were unique and will not reoccur. There is no reason to believe respondent will not remain a law abiding citizen.

DETERMINATION OF ISSUES

I

Cause exists to suspend or revoke respondent's real estate salesperson's license under Business and Professions Code section 490 and under Business and Professions Code section 10177(b), based on respondent's conviction of petty theft, a crime involving moral turpitude which is substantially related to the qualifications, functions, and duties of a real estate salesperson. This determination is based on Findings of Fact IV, V, and VI.

II

Respondent is a responsible person who is remorseful concerning her petty theft conviction who has engaged in conduct since her conviction evidencing her rehabilitation. It would not be against the public interest to permit respondent to retain her real estate salesperson's license on a restricted basis. This determination is based on Findings of Fact II, III, and VII.

ORDER

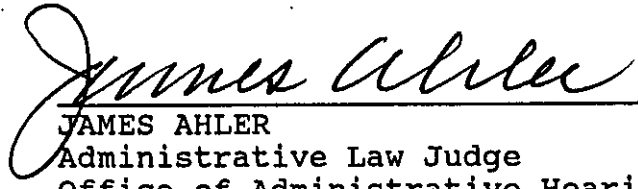
All licenses and licensing rights of respondent Noushin Berjis under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent under Business and Professions Code section 10156.5 of if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision.

The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under Business and Professions Code section 10156.6:

1. The restricted license issued to respondent may be suspended before a 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.
2. The restricted license issued to respondent may be suspended before a hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and,
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken

and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

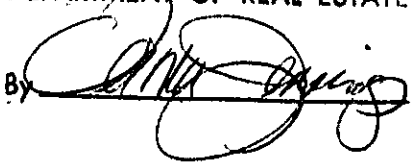
Dated: September 5, 1997


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

ELLIOTT MAC LENNAN, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
APR 10 1997
DEPARTMENT OF REAL ESTATE

By 

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-2300 SD
NOUSHIN BERJIS,)	AMENDED ACCUSATION
)	
)	
)	
Respondent.)	
_____)	

The Accusation filed March 4, 1997, is amended in its entirety, including a change in its filing number from H-2301 SD to H-2300 SD, as follows:

The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against NOUSHIN BERJIS is informed and alleges in his official capacity as follows:

I

Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (Code).

/

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II

Respondent was originally licensed by the Department of Real Estate of the State of California as a real estate salesperson on September 13, 1985.

III

On July 20, 1995 in the Municipal Court of California, San Diego Judicial District, County of San Diego, State of California, respondent was convicted by a plea of nolo contendere to one count of violating Section 484/488 of the California Penal Code (Petty theft) for a misdemeanor crime which by its facts and circumstances involves moral turpitude and is substantially related under Section 2910, Chapter 6, Title 10, of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

IV

The facts as alleged constitute cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of all licenses and license rights of respondent under the Real Estate Law.

/

/

/

/

/

/

/

/

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

8 Dated at San Diego, California
9 this 10th day of April, 1997.

10 J. CHRIS GRAVES
11 Deputy Real Estate Commissioner
12
13
14
15
16
17
18
19
20
21
22
23
24

25 cc: Noushin Berjis
26 American Mortgage Express Financial
27 Sacto.
RMS

1 ELLIOTT MAC LENNAN, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California 90012

5 (213) 897-3937

FILED
MAR - 4 1997
DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of) No. H-2301 SD
12)
13 NOUSHIN BERJIS,) A C C U S A T I O N
14)
15 Respondent.)

16 The Complainant, J. Chris Graves, a Deputy Real Estate
17 Commissioner of the State of California, for cause of accusation
18 against NOUSHIN BERJIS is informed and alleges in his official
19 capacity as follows:

20 I

21 Respondent is presently licensed and/or has license
22 rights under the Real Estate Law (Part 1 of Division 4 of the
23 California Business and Professions Code) (Code).

24 /

25 /

26 /

27 /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II

Respondent was originally licensed by the Department of Real Estate of the State of California as a real estate salesperson on September 13, 1985.

III

On July 20, 1995 in the Municipal Court of California, San Diego Judicial District, County of San Diego, State of California, respondent was convicted by a plea of nolo contendere to one count of violating Section 484/488 of the California Penal Code (Petty theft) for a misdemeanor crime which by its facts and circumstances involves moral turpitude and is substantially related under Section 2910, Chapter 6, Title 10, of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

IV

The facts as alleged constitute cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of all licenses and license rights of respondent under the Real Estate Law.

/

/

/

/

/

/

/

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of respondent NOUSHIN BERJIS under the Real Estate Law and for such other and further relief as may be proper under other applicable provisions of law.

Dated at San Diego, California
this 4th day of March, 1997.

J. CHRIS GRAVES
Deputy Real Estate Commissioner

cc: Noushin Berjis
American Mortgage Express Financial
Sacto.
RJM

Handwritten: Acc. Plan

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 23 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)

NOUSHIN BERJIS,)

Respondent.)

Case No. H-2300 SD

OAH No. L-1997050281

By *[Signature]*

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 1350 Front Street, Room 6022, San Diego, California, on **September 5, 1997**, at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: May 23, 1997.

DEPARTMENT OF REAL ESTATE

cc: Noushin Berjis
American Mortgage Express Fin.
J. Chris Graves
Sacto.
OAH-SD

[Signature]
ELLIOTT MAC LENNAN, Counsel

RE 501 (Mac 8/92vj)