

FILED  
MAR 21 2001  
DEPARTMENT OF REAL ESTATE  
By Kathleen Contreras

In the Matter of the Application of

LINDA ELIZABETH WEISS,

Respondent.

### DECISION

Condition "8" of the Order of the Proposed Decision is not adopted and shall not be part of the Decision.

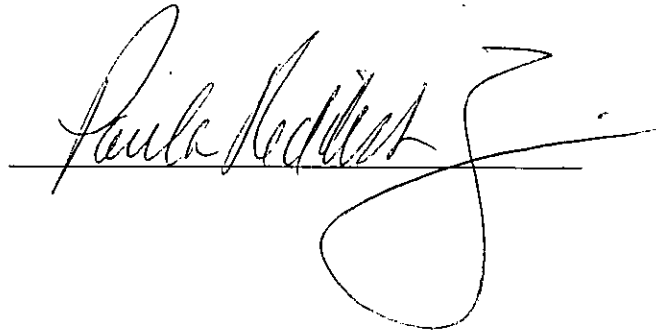
- 1 -

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 April 10, 2001.

IT IS SO ORDERED March 14, 2001.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

A handwritten signature in cursive script, reading "Paula Reddish Zinnemann", is written over a horizontal line. The signature is fluid and stylized, with a large loop at the end.

**BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

In the Matter of the Application of:

LINDA ELIZABETH WEISS

Applicant.

DRE No. H-2575-SD

OAH No. L-2000100375

**PROPOSED DECISION**

Administrative Law Judge James Ahler, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on February 7, 2001.

Deidre L. Johnson, Counsel, represented complainant J. Chris Graves, Deputy Real Estate Commissioner, Department of Real Estate.

Linda Elizabeth Weiss (hereafter applicant) represented herself and was present throughout the entire proceeding.

The matter was submitted on February 7, 2001.

**FACTUAL FINDINGS**

1. Applicant is 42 years old. Her parents were missionaries and she grew up in Hawaii and Central America. Her family settled in Oxnard, Ventura County, California, in the 1970s.

In 1976 applicant graduated from the Monterey Bay Academy, a private high school. Thereafter, applicant attended Pacific Union College in Napa and the University of California, Santa Barbara, where she received a Bachelor of Arts degree in Business Economics in 1982.

After receiving her undergraduate degree, applicant moved to San Diego where she worked briefly for Xerox. Applicant married in 1984 and she and her husband lived together in La Costa, San Diego County, for the next five years or so. When applicant was living in La Costa, she began working as a loan officer for large financial institutions.

Applicant and her husband separated around 1990. Applicant continued working as a loan officer and continued living in North San Diego County coastal communities.

Applicant suffers from a depressive condition for which she sees a psychiatrist. Her condition is currently being managed by medications. Applicant voluntarily saw a M.F.C.C. following her 1997 conviction. While she no longer sees the family counselor and her visits with mental health care professionals are now limited to seeing her psychiatrist, applicant testified that she knows when to seek professional help.

Applicant has a nine year old son who lives with her in the family home in Carlsbad.

Applicant is involved in numerous charitable and community activities including Multiple Sclerosis Society, Serve of San Diego, Toys for Tots, the Women's Resource Center, Meals on Wheels and the local Cancer Society.

Applicant recently left work as a loan officer and began working for an Internet company which develops websites in specialized markets. Applicant enjoys her employment, but she would like to have a real estate salesperson license to augment her income and to work for other types of lenders than large banking institutions.

2. On November 8, 1999, applicant filed a Salesperson License Application with the Department. She listed American Mortgage Express as her sponsoring broker.

In response to question 25, applicant admitted that she had been convicted of a crime.

In response to question 27, applicant stated that she was convicted of Penal Code section 484 on November 23, 1996, at a court located at 330 W. Broadway, San Diego, California 92101. Applicant provided the case number and stated that she was fined.

3. On January 27, 1997, applicant was convicted on her plea of guilty of the offense of petty theft, in violation of Penal Code section 484(a)-488 in the Municipal Court of California, San Diego Judicial District, San Diego County, in Case No. M7828978.

Imposition of sentence was suspended and applicant was placed on three years summary probation. Terms and conditions of probation required applicant to spend one day in custody (with one day's credit being given as a result of applicant having spent one night in the county jail following her arrest), to pay a \$400 fine, to make a \$100 restitution payment, to attend a shoplifters course, to volunteer ten days of service with the United Way and to violate no other laws.

Applicant did all that was asked of her and successfully completed probation.

4. In her written change of plea form, applicant admitted that she "took shoes and a shirt from Nordstroms Rack with the intent to permanently deprive the owner thereof." At the hearing, applicant was unable to recall any details concerning the offense.

5. Applicant testified that the offense occurred when she was in the process of changing medications and she had no other explanation for her conduct. She testified, "I don't know why I did it – it was a stupid thing to do" and "I've sort of blocked it out."

Applicant testified that she has not engaged in similar conduct before or after the incident resulting in her conviction. With regard to the possibility of such conduct occurring again, she testified, "Nothing like that is ever going to happen again – it has marred my life."

The offense appears to be situational in nature, although applicant has no insight into or understanding of the reason why she committed the petty theft other than to state that she was in the process of changing medications.

6. Applicant's conviction of petty theft is a conviction involving moral turpitude and it is substantially related to the qualifications, functions and duties of a licensed real estate salesperson.<sup>1</sup>

A licensed real estate salesperson has access to the homes and properties of others while they are away and must be of good moral character. A licensed real estate salesperson engaged in lending transactions must be truthful in making representations to lenders and borrowers alike.

A conviction of a crime involving moral turpitude reflects adversely on an individual's moral character.

7. The following criteria exist with regard to applicant's rehabilitation.<sup>2</sup>

Slightly more than four years have passed since applicant's conviction. There is no other history of any misconduct. Applicant made restitution and promptly paid her fine and promptly fulfilled all other terms and conditions of her probation. Applicant's family life appears to be stable. Applicant has maintained full employment since her conviction.

Applicant has experienced a significant change in attitude since her arrest and conviction. Although applicant testified that she did not understand why she committed the petty theft or recall any details surrounding it, she is truly embarrassed and repentant

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<sup>1</sup> Theft is a crime involving moral turpitude. See, *In re Honoroff* (1975) 15 Cal.3d 755.

Title 10, California Code of Regulations, section 2910 sets forth criteria which should be considered in determining if the conviction of a crime is substantially related to the qualifications, functions and duties of a licensee of the Department of Real Estate.

<sup>2</sup> Title 10, California Code of Regulations, section 2911 sets forth criteria which should be considered in evaluating whether an applicant for a real estate license is rehabilitated and fit to hold a license.

concerning the offense. It is clear is that the offense was out of character and the likelihood of a similar offense is remote.

8. Records on file with the Department established that applicant has not completed all of the courses required of her under Business and Professions Code section 10153.4.

9. On August 15, 2000, Deputy Real Estate Commissioner J. Chris Graves signed the Statement of Issues in his official capacity. The Statement of Issues and other jurisdictional documents were served on applicant thereafter.

Applicant requested an administrative hearing.

On February 7, 2001, the record in the administrative hearing was opened. Jurisdictional documents were presented, sworn testimony was received and documentary evidence was introduced. Closing arguments were given, the record was closed and the matter was submitted.

### **LEGAL CONCLUSIONS**

1. Cause exists to deny applicant's applicant for the issuance of a real estate salesperson license under Business and Professions Code sections 480(a) and 10177(b). Applicant was convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions and duties of a real estate salesperson.

This conclusion is based on Factual Findings 1-7.

2. Applicant worked in the lending for more than a decade without any difficulties. She has no other criminal record. Applicant disclosed her conviction in her application for a real estate license. The conviction appears to be out of character and the result of an isolated event. Applicant completed her criminal probation.

Applicant's expression of remorse was sincere and compelling, even though she was unaware of the precise reason she committed an act of theft. Over four years have passed since applicant's conviction. Given the Department's criteria for rehabilitation, it would not be contrary to the public interest to permit applicant to obtain a restricted real estate salesperson license. The likelihood of applicant engaging in similar misconduct in the future is remote.

This conclusion is based on Factual Findings 1-7.

## ORDER

1. Applicant's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: applicant 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 Applicant 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, applicant has submitted the required evidence of course completion and the Commissioner has given written notice to applicant of lifting of the suspension.

2. Under Business and Professions Code section 10154, if applicant has not satisfied the requirements for an unqualified license under Business and Professions Code section 10153.4, applicant shall not be entitled to renew the restricted license, and she shall not be entitled to the issuance of another license which is subject to Business and Professions Code section 10153.4 until four years after the date of the issuance of the preceding restricted license.

3. Any restricted license may be suspended prior to hearing by Order of the Real Estate Commissioner in the event respondent is convicted or enters a plea of guilty or nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

4. In the event respondent is arrested for any crime while she holds a restricted license, respondent shall, within seven days of her arrest, advise the Real Estate Commissioner in writing of the fact of her arrest, the date of her arrest, the crime or crimes for which she was arrested, and the name and the address of the arresting agency.

5. The restricted license 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 any of the conditions attaching to the restricted license.

6. 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.

7. 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

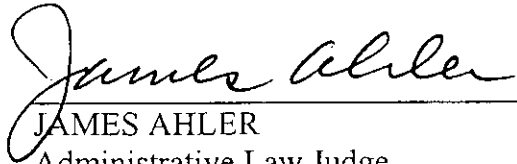
prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(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.

8. 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 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 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: February 14, 2001.

  
JAMES AHLER

Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
NOV 09 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

LINDA ELIZABETH WEISS

}

Case No. H-2575 SD

OAH No.

By Shelly Ely

Respondent

FIRST CONTINUED  
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 THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CALIFORNIA 92101 on TUESDAY--FEBRUARY 7, 2001, at the hour of 1:30 PM, 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 Hearing 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 for 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: NOVEMBER 9, 2000

By Deidre L. Johnson  
DEIDRE L. JOHNSON Counsel

**BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**FILED**  
**OCT - 4 2000**  
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

*In the Matter of the Application of*

LINDA ELIZABETH WEISS,

Case No. H-2575 SD

OAH No. \_\_\_\_\_

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 \_\_\_\_\_

Office of Administrative Hearings, 1350 Front Street,

Room 6022, San Diego, California 92101

on October 31, 2000, at the hour of 1:30 PM,  
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.

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DEPARTMENT OF REAL ESTATE

Dated: October 4, 2000

By Larry Alamao  
LARRY A. ALAMAO *Counsel*

1 DEIDRE L. JOHNSON, Counsel  
2 State Bar No. 66322  
3 Department of Real Estate  
4 P. O. Box 187000  
5 Sacramento, CA 95818-7000  
6 Telephone: (916) 227-0789

FILED  
AUG 22 2000

DEPARTMENT OF REAL ESTATE

By Juan M. [Signature]

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

11 \* \* \*

12 In the Matter of the Application of )  
13 LINDA ELIZABETH WEISS, ) NO. H-2575 SD  
14 Respondent. ) STATEMENT OF ISSUES  
15 )

16 The Complainant, J. Chris Graves, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of Statement  
18 of Issues against LINDA ELIZABETH WEISS, alleges as follows:

19 I

20 LINDA ELIZABETH WEISS (hereafter Respondent), pursuant  
21 to the provisions of Section 10153.3 of the Business and  
22 Professions Code, made application to the Department of  
23 Real Estate of the State of California for a real estate  
24 salesperson license on or about November 8, 1999, with the  
25 knowledge and understanding that any license issued as a  
26 result of said application would be subject to the conditions  
27 of Section 10153.4 of the Business and Professions Code.

1 II

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

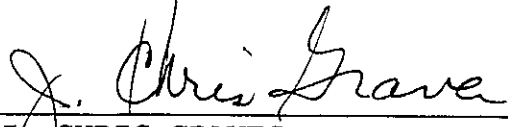
5 III

6 On or about January 27, 1997, in the Municipal Court  
7 of the State of California, County of San Diego, Respondent was  
8 convicted of a violation of California Penal Code Section 484(A)-  
9 488 (THEFT), a misdemeanor, a crime involving moral turpitude,  
10 and a crime which bears a substantial relationship under Section  
11 2910 of Title 10, California Code of Regulations, to the  
12 qualifications, functions, or duties of a real estate licensee.

13 IV

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

18 WHEREFORE, the Complainant prays that the above-  
19 entitled matter be set for hearing and, upon proof of the charges  
20 contained herein, that the Commissioner refuse to authorize the  
21 issuance of, and deny the issuance of a real estate salesperson  
22 license to Respondent, and for such other and further relief as  
23 may be proper in the premises.

24   
25 J. CHRIS GRAVES  
26 Deputy Real Estate Commissioner

26 Dated at San Diego, California  
27 this 15<sup>th</sup> day of August, 2000.