BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

FILED

DEC 17 2002

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Application of ELIZABETH ZAMORA MASSINBURGE, Respondent.	NO. H-2757 SD L-2002090045

DECISION

The Proposed Decision dated November 25, 2002, 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. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon on JANUARY 6, 2003.

IT IS SO ORDERED December 11, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of: ELIZABETH ZAMORA MASSINBURGE, Respondent.	Case No. H-2757 SD OAH No. L2002090045

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 21, 2002, in San Diego, California.

Larry Alamo, Assistant Chief Counsel, represented complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Elizabeth Zamora Massinburge represented herself and was present throughout the entire proceeding.

The matter was submitted on November 21, 2002.

FACTUAL FINDINGS

Application History

1. On February 28, 2002, Elizabeth Zamora Massinburge (Respondent) filed her Salesperson License Application with the Department of Real Estate (the Department) for the issuance of a license.

2. The introduction to Questions 24-26 in that application stated:

> **"Carefully read and provide detailed answers to questions #24-26. You must provide a *yes* or *no* response to all questions.**
>
> 'Convicted' as used in Question 25 includes a verdict of guilty by judge or jury, a plea of guilty or of nolo contendere, or a forfeiture of bail in municipal, superior or federal court. All convictions must be disclosed whether or not the plea or verdict was set aside, the conviction against you was dismissed, or expunged or if you have

been pardoned. Convictions occurring while you were a minor must be disclosed unless the record of conviction has been sealed under Section 1203.45 of the California Penal Code or Section 781 of the Welfare and Institutions Code." (Original emphasis.)

Question 25 asked:

"HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? (YOU MAY OMIT CONVICTIONS FOR DRUNK DRIVING, RECKLESS DRIVING, AND MINOR TRAFFIC CITATIONS WHICH DO NOT CONSITUTE A MISDEMANOR OR FELONY OFFENSE.)" (Original emphasis.)

3. In response to Question 25, Respondent checked the box for "No."

4. Respondent did not provide any information in response to Question 27, which asked for such information as the court of conviction, the name of the arresting agency, the date of conviction, the type of conviction, the code section violated and the disposition.

5. On February 20, 2002, Respondent signed the Salesperson License Application under penalty of perjury, certifying that her answers and statements were true and correct.

6. On March 26, 2002, and on April 15, 2002, the Department sent letters to Respondent advising her that further information needed to be obtained from the Department of Justice before a determination could be made concerning her application.

Jurisdictional Matters

7. On August 6, 2002, J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate, State of California, signed the Statement of Issues in his official capacity. The Statement of Issues and other required jurisdictional documents were served on Respondent.

By Notice of Defense on Application dated August 22, 2002, Respondent acknowledged receipt of the jurisdictional documents and requested a hearing.

On November 21, 2002, the record in the administrative hearing was opened. Jurisdictional documents were presented. Documentary evidence and sworn testimony was received. Closing argument was given, the record was closed and the matter was submitted.

Respondent's Convictions

8. On April 8, 1983, Respondent was convicted on her plea of guilty of petty theft (in violation of Penal Code section 484/488m) and of trespass with injury to property (in violation of Penal Code section 602(j)) in the Municipal Court of California, County of San Diego, under her maiden name of Elizabeth Zamora Atencio.

Respondent placed on three years probation and was fined $100.

9. On July 10, 1984, Respondent was convicted on her plea of guilty of trespass with injury to property (in violation of Penal Code section 602(j)) in the Municipal Court of California, County of San Diego, under her maiden name of Elizabeth Zamora Atencio. The conviction arose out of an offense involving petty theft.

Respondent placed on three years probation and was fined $250.

10. On February 4, 1987, Respondent was convicted on her plea of guilty of petty theft (in violation of Penal Code sections 484/488) in the Municipal Court of California, County of San Diego, under her maiden name of Elizabeth Zamora Atencio.

Respondent placed on three years probation, was ordered to provide ten days public service and was ordered to attend and complete an eight-week shoplifter's course.

11. On December 10, 1990, Respondent was convicted on her plea of guilty of petty theft (in violation of Penal Code sections 484/488) and of petty theft with a prior conviction (in violation of Penal Code section 666) in the Municipal Court of California, County of San Diego, under her maiden name of Elizabeth Zamora Atencio.

Respondent placed on three years probation, was ordered to serve one day in custody and to provide 45 days public service.

12. Each of Respondent's convictions involved theft-related offenses. Three of the offenses were committed while Respondent was on probation.

Respondent's Testimony

13. Respondent was born on October 1, 1963. She grew up in the Philippines and Guam. When Respondent was 15 years old, her family moved to San Diego County. Respondent graduated from an adult high school around 1987.

14. Respondent attended Miramar Community college for a year and one-half, then enrolled at Pacific Coast College to obtain vocational training as a medical assistant. Respondent attended Pacific Coast College for approximately nine months and received a certification of completion as a medical assistant.

15. Respondent was a single mother and was employed full-time as a medical assistant for a Point Loma nutritionist for approximately ten years.

Respondent worked part-time as a manicurist.

16. Respondent married a Border Patrol agent. Respondent and her husband live in Escondido, North San Diego County, with her 20-year-old and 14-year-old sons from a previous relationship and with their one-year-old son.

17. Respondent's mother is a licensed real estate salesperson. Respondent would like to assist her mother in the real estate profession and, for that reason, she applied for a real estate salesperson's license.

Before making application for her real estate salesperson's license, according to Respondent, she traveled to the downtown San Diego courthouse and had her four convictions expunged.[1]

18. Respondent testified she did not know she had to disclose her convictions on the application because they were expunged. Respondent testified that she did not read the application carefully and was not aware she was required to disclose all convictions, even if they had been expunged.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. An applicant has the burden of establishing that he or she is qualified to hold an occupational or professional license. See, *Martin v. Alcoholic Beverage Controls Appeals Bd.* (1959) 52 Cal.2d 238.

The standard of proof is a preponderance of the evidence. See, Evidence Code section 115.

Applicable Statutes

2. Business and Professions Code section 480(a) provides in pertinent part:

"A board may deny a license . . . 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. . ."

3. Business and Professions Code section 480(c) provides in pertinent part:

"(c) A board may deny a license . . . on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license."

4. Business and Professions Code section 10117 provides in pertinent part:

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[1] Respondent did not provide any proof of the expungement of those convictions, but an Order Granting Relief for Case No M 608382 (the December 10, 1990, conviction) was attached to documents provided by the Department of Justice. No similar document was provided for the other convictions.

"The commissioner . . . may deny the issuance of a license to an applicant who has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) Entered a plea of guilty or nolo contendere to . . . a crime involving moral turpitude. . ."

Moral Turpitude

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

Substantial Relationship

6. Criminal conduct must bear a substantial relationship to an occupation or profession in order for such conduct to disqualify the wrongdoer from participating in that occupation or profession. See, for example, *Morrison v. State Board of Education* (1969) 1 Cal.3d 214.[2]

7. Title 10, California Code of Regulations, section 2910 provides:

"(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department . . . if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person. . .

. . .

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee."

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[2] The disabling nature of the conduct must be measured by obligations that exist in the occupation or profession in question, not merely by determining that "moral turpitude" exists or that "immoral conduct" has occurred. As the Supreme Court wrote in *Morrison*: "Surely the Legislature did not intend that identical standards of probity should apply to more than half a million professionals and government employees in widely varying fields without regard to their differing duties, responsibilities, and degree of contact with the public."

8. Respondent's petty theft and trespass convictions are substantially related to the qualifications, functions or duties of a licensee of a real estate licensee by statute and by regulation. Real estate salespersons are required to be honest and of good moral character. A theft-related conviction reflects poorly on an individual's character for honesty.

Cause to Deny the Application

9. Cause exists to deny Respondent's application for a real estate salesperson's license under Business and Professions Code sections 480 (a) and 10117(b). Respondent was convicted of petty thefts and trespasses arising out of theft-related offenses, crimes involving moral turpitude. The offenses were substantially related to the qualifications, functions, and duties of a real estate salesperson.

This conclusion is based on Factual Findings 1-6, 8, 10-14, 16 and on Legal Conclusions 1-11.

10. Cause exists to deny Respondent's application for a real estate salesperson's license under Business and Professions Code sections 480 (c) and 10117(a) in that Respondent made material misstatements of fact in her application for a real estate salesperson license. Respondent's explanation was insufficient to justify her failure to admit her several convictions, particularly when she specifically made a trip to the courthouse to have the convictions expunged.

This conclusion is based on Factual Findings 1-8, 11, and 16 and on Legal Conclusions 1, 3, and 4.

Public Interest

11. It is not in the public interest to issue Respondent a real estate salesperson's license at this time, even on a restricted basis, because Respondent submitted a misleading application for that license.

Should Respondent submit a truthful application and should she present evidence showing rehabilitation under Title 10, California Code of Regulations, section 2911, her application for a real estate salesperson's license will be more favorably considered.

This conclusion is based on all Factual Findings, on all Legal Conclusions and on Title 10, California Code of Regulations, section 2911.

ORDER

Elizabeth Zamora Massinburge's application for a real estate salesperson's license dated February 20, 2002, is denied.

DATED: November 25, 2002.

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

FILED
SEP 10 2002
DEPARTMENT OF REAL ESTATE
By [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

ELIZABETH ZAMORA MASSINBURGE,

Respondent

Case No. H-2757 SD

OAH No.

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, SUITE 6022, SAN DIEGO, CA 92101** on **THURSDAY, NOVEMBER 21, 2002**, at the hour of **9:00 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 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 subpenas 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: SEPTEMBER 10, 2002

By Larry Alamao

LARRY A. ALAMAO, Counsel

RE 500 (Rev. 8/97)

DAVID A. PETERS, Counsel (SBN 99528)
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FILED
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DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of
ELIZABETH ZAMORA MASSINBURGE,
Respondent.

No. H-2757 SD

STATEMENT OF ISSUES

The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against ELIZABETH ZAMORA MASSINBURGE aka Elizabeth Zamora Atencio (hereinafter "Respondent") alleges as follows:

I

Respondent, pursuant to the provisions of Section 10153.3 of the Business and Professions Code, made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about February 28, 2002 with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Section 10153.4 of the Business and Professions Code.

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II

Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

III

In Response to Question 25 of said application, to wit: "Have you ever been convicted of any violation of Law?", Respondent answered "No".

IV

On or about April 8, 1983, in the Municipal Court of California, County of San Diego, State of California, Respondent was convicted of a violations of Section 484-488 of the California Penal Code (Petty Theft) and Section 602(j) of the California Penal Code (Trespass Injury to Property), crimes involving moral turpitude which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

V

On or about July 10, 1984, in the Municipal Court of California, County of San Diego, State of California, Respondent was convicted of a violation of Section 602(j) of the California Penal Code (Trespass Injury to Property), 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.

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VI

On or about February 4, 1987, in the Municipal Court of California, County of San Diego, State of California, Respondent was convicted of a violation of Section 484-488 of the California Penal Code (Petty 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.

VII

On or about December 10, 1990, in the Municipal Court of California, County of San Diego, State of California, Respondent was convicted of a violations of Sections 484-488 of the California Penal Code (Petty Theft), and Section 666 of the California Penal Code (Petty Theft with a Prior), crimes involving moral turpitude which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

VIII

Respondent's failure to reveal the convictions set forth in Paragraphs IV, V, VI and VII above, in said application constitute the attempted procurement of a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which failure is cause for denial of Respondent's application for a real estate license under Section 10177(a) and 480(c) of the Business and Professions Code.

IX

The crimes of which Respondent was convicted, as alleged in Paragraphs IV, V, VI and VII above, constitute 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 in the premises.

J. Chris Graves

J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 6th day of ~~July~~ August, 2002.