

JEFF DAVI  
Real Estate Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

ELIZABETH ZAMORA MASSINBURGE,

Respondent.

File No. H – 3149 SD

OAH No. L2005030016

**AMENDED PROPOSED DECISION**

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on May 17, 2005.

Truly Sughrue, Real Estate Counsel, represented Complainant, J. Chris Graves, Deputy Real Estate Commissioner, State of California, Department of Real Estate.

Peter J. Hughes, Esq. represented Respondent, who was present during the hearing.

The matter was submitted on July 8, 2005.<sup>1</sup>

**FACTUAL FINDINGS**

1. On October 2, 2003, Elizabeth Zamora Massinburge (Respondent) made application for a real estate salesperson license to the State of California, Department of Real Estate (Department) with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions set forth in Business and Professions Code section 10153.4.

2. J. Chris Graves (Complainant) made Statement of Issues, File No. H- 3149 SD, dated February 2, 2005, in his official capacity as Deputy Real Estate Commissioner, State of California, and not otherwise.

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<sup>1</sup> The hearing in this matter occurred on May 17, 2005. On June 30, 2005, the record was re-opened, and Complainant was ordered to file a certified copy of Exhibit 5 that includes page 6 and to serve a copy on Respondent. He complied on July 5, 2005. Without objection by Respondent, on July 8, 2005, the record was closed, and the matter was submitted. The certified copy of Exhibit 5 that includes page 6 has been substituted for the document filed during the hearing.

Respondent filed Notice of Defense on Application, dated February 15, 2005, requesting a hearing in this matter.

3. On April 8, 1983, in the Municipal Court of the State of California, County of San Diego, in the case entitled *The People of the State of California v. Elizabeth Zamora Atencio*, on her plea of guilty, Respondent was convicted of a violation of Penal Code sections 484-488 (Petty Theft) and Penal Code section 602, subdivision (j) (Trespass with Injury to Property).

As a consequence of the conviction, the Court placed Respondent on three years informal probation and imposed a fine of \$100.00.

4. On July 10, 1984, in the Municipal Court of the State of California, County of San Diego, in the case entitled *The People of the State of California v. Elizabeth Zamora Atencio*, on her plea of guilty, Respondent was convicted of a violation of Penal Code section 602, subdivision (j) (Trespass with Injury to Property). The conviction arose out of an offense involving petty theft.

As a consequence of the conviction, the Court placed Respondent on three years probation and imposed a fine of \$250.00.

5. On February 4, 1987, in the Municipal Court of the State of California, County of San Diego, in the case entitled *The People of the State of California v. Elizabeth Zamora Atencio*, on her plea of guilty, Respondent was convicted of a violation of Penal Code sections 484/488 (Petty Theft).

As a consequence of the conviction, the Court placed Respondent on three years probation and ordered her to provide 10 days public service and to attend and complete an eight-week shoplifter's course.

6. On December 10, 1990, in the Municipal Court of the State of California, County of San Diego, in the case entitled *The People of the State of California v. Elizabeth Zamora Atencio*, on her plea of guilty, Respondent was convicted of a violation of Penal Code sections 484/488 (Petty Theft) and 666 (Petty Theft with a Prior Conviction).

As a consequence of the conviction, the Court placed Respondent on three years probation and ordered her to serve one day in custody and to provide 45 days community service.

7. Each of Respondent's convictions involved theft-related offenses. Three of the offenses occurred while Respondent was on criminal probation.

8. The crimes of which Respondent was convicted (Findings 3, 4, 5 and 6) involved moral turpitude and bear a substantial relationship to the qualifications, functions or duties of a real estate licensee.

9. The crimes of which Respondent has been convicted constitute cause to deny her application for a real estate salesperson license, by reason of Findings 3, 4, 5, 6, 7 and 8.

10. Respondent made application to the Department for a real estate salesperson license on 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 Business and Professions Code section 10153.4.

11. In Response to Question 25 of her February 28, 2002 application, to wit: "Have you ever been convicted of any violation of law?" Respondent answered "No". She 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. On February 20, 2002, Respondent signed the application under penalty of perjury certifying that her answers and statements were true and correct.

Despite the language on the application, Respondent believed that she was not required to disclose her convictions because she mistakenly thought that the convictions had been expunged; she did not read the application carefully and overlooked her obligation to reveal the convictions, even if they had been expunged; she provided a copy of an Order Granting Relief for her December 10, 1990 conviction but not the earlier convictions. Given the psychological evaluation to assess her intellectual and emotional functioning in regard to her morality and character, performed by Meredith Friedman, Ph.D. (Exhibit D), Respondent's testimony regarding the foregoing is credible. As such, the material misstatement of fact in her application was not intentional.

Considering the facts set forth in this Finding 11, the evidence did not establish that Respondent's failure to disclose her convictions constitutes an effort to procure a real estate license by fraud, misrepresentation, deceit or by making a material misstatement of fact in her application and constitutes cause for denial of Respondent's application for a real estate salesperson license.

12. Effective January 6, 2003, in Case No. H-2757, the Department denied Respondent's application for a real estate salesperson's license for violation of Business and Professions Code sections 480, subdivisions (a) and (c), 10177, subdivisions (a) and (b).

13. Respondent offered evidence of explanation, mitigation and rehabilitation.

- She grew up in the Philippines and Guam. Her family moved to San Diego County when she was 15 years old. She became pregnant with her first child when she was 18 years old and lived with her son's father and his mother between the ages of 19 and 21 years. Thereafter she moved home for six months, applied for and obtained Aid to Families with Dependant Children (AFDC) and then moved into her own apartment. She completed a medical assistant program in 1985, discontinued receiving AFDC and

worked as a medical assistant for the next 10 years. Also she has worked as a manicurist. She has been married 17 years and has three sons.

- She explained the facts and circumstances underlying her convictions and the reasons that she believes she committed the theft offenses. Growing up, her family had little or no money. As a young adult, though she had some money, she had great difficulty making ends meet financially. Though her sisters were aware of her convictions, her mother and her husband did not know about her complete criminal history.

14. The Department seeks to deny the issuance of a real estate salesperson because Respondent has a criminal history of theft offenses; three occurred while she was on criminal probation. It has been 15 years since her most recent conviction and three years since she submitted the application in which she failed to disclose her criminal offenses. She recognizes that her criminal acts were wrong, particularly as she attempts to teach her children appropriate morals and values. She is a wife, mother and a hard working woman, who sometimes holds two jobs. When she submitted her most recent application, Respondent disclosed her convictions. The evidence established that Respondent is substantially rehabilitated at this time.

### LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), the crimes of which Respondent was convicted constitutes cause to deny her application for a real estate salesperson license, by reason of Findings 1, 3, 4, 5, 6, 7, 8 and 9.

2. Pursuant to Business and Professions Code sections 480, subdivision (c) and 10177, subdivision (a), insufficient evidence was offered to establish that Respondent's failure to disclose the convictions set forth in Findings 3, 4, 5 and 6 constitutes an effort by her to procure a real estate salesperson license by misrepresentation, deceit or making a material misstatement of fact in her application and cause to deny her application for a real estate sales person license, by reason of Findings 1, 3, 4, 5, 6, 10 and 11.

3. The facts (Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12), the violation (Legal Conclusion 1), and the Department's criteria for rehabilitation (Cal. Code Regs., tit. 10, § 2911) have been considered. Respondent established that she is sufficiently rehabilitated such that it would not be contrary to the public interest for the Department to issue her a restricted real estate salesperson license at this time.

### ORDER

**The application for a real estate salesperson license of Respondent Elizabeth Zamora Massinburge is denied; provided, however, the right to a restricted real estate salesperson license is granted. Any restricted real estate salesperson license issued to**

**Respondent Elizabeth Zamora Massinburge** shall be subject to the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under the authority of Business and Professions Code section 10156.6.

1. **Respondent Elizabeth Zamora Massinburge's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4.**

**Within eighteen (18) months of the issuance of the restricted license, Respondent Elizabeth Zamora Massinburge shall submit evidence, satisfactory to the Commissioner, of successful completion, at an accredited institution, of two of the courses listed in Business and Professions Code 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 Elizabeth Zamora Massinburge fails to present satisfactory evidence of successful completion of the two required courses to the Department in a timely manner, the restricted license shall be suspended automatically, 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 Elizabeth Zamora Massinburge that the suspension has been lifted.**

2. **Pursuant to Business and Professions Code section 10154, if Respondent Elizabeth Zamora Massinburge has not satisfied the requirements for an unqualified license under Business and Professions Code section 10153.4, Respondent Elizabeth Zamora Massinburge shall not be entitled to renew the restricted license and 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. **The restricted license issued to Respondent Elizabeth Zamora Massinburge may be suspended prior to hearing by Order of the Real Estate Commissioner in the event Respondent Elizabeth Zamora Massinburge is convicted or enters a plea of nolo contendere to a crime that is substantially related to Respondent Elizabeth Zamora Massinburge's fitness or capacity as a real estate licensee.**

4. **The restricted license issued to Respondent Elizabeth Zamora Massinburge may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Real Estate Commissioner that Respondent Elizabeth Zamora Massinburge has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attached to the restricted license.**

5. **Respondent Elizabeth Zamora Massinburge shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions,**

limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

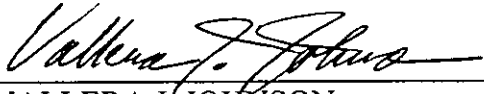
6. Respondent Elizabeth Zamora Massinburge shall submit with her application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) that the employing broker has read the Decision of the Real Estate 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.

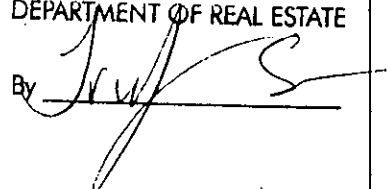
7. Within six (6) months from the effective date of this Decision, Respondent Elizabeth Zamora Massinburge shall take and pass the Professional Responsibility Examination administered by the Department of Real Estate and pay the appropriate examination fee. If Respondent Elizabeth Zamora Massinburge fails to satisfy this condition, the Real Estate Commissioner may order suspension of her license until she passes the examination.

DATED: July 28, 2005

  
VALLERA J. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

FILED  
FEB 11 2005

DEPARTMENT OF REAL ESTATE

By 

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6  
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8

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

11 In the Matter of the Application of )  
12 ELIZABETH ZAMORA MASSINBURGE, )  
13 Respondent. )

No. H-3149 SD

STATEMENT OF ISSUES

15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against ELIZABETH ZAMORA MASSINBURGE (hereinafter "Respondent"),  
18 is 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 October 2, 2003, 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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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 April 8, 1983, in the Municipal Court,  
7 County of San Diego, Respondent was convicted of a violation of  
8 Section 484-488 (Petty Theft) and Section 602(j) (Trespass Injury  
9 to Property) of the California Penal Code, crimes involving moral  
10 turpitude which bears a substantial relationship under Section  
11 2910, Title 10, California Code of Regulations, to the  
12 qualifications, functions, or duties of a real estate licensee.

13 IV

14 On or about July 10, 1984, in the Municipal Court,  
15 County of San Diego, Respondent was convicted of a violation of  
16 Section 602(j) (Trespass Injury to Property) of the California  
17 Penal Code, a crime involving moral turpitude which bears a  
18 substantial relationship under Section 2910, Title 10, California  
19 Code of Regulations, to the qualifications, functions, or duties  
20 of a real estate licensee.

21 V

22 On or about February 4, 1987, in the Municipal Court,  
23 County of San Diego, Respondent was convicted of a violation of  
24 Section 484-488 (Petty Theft) of the California Penal Code, a  
25 crime involving moral turpitude which bears a substantial  
26 relationship under Section 2910, Title 10, California Code of  
27

1 Regulations, to the qualifications, functions, or duties of a  
2 real estate licensee.

3 VI

4 On or about December 10, 1990, in the Municipal Court,  
5 County of San Diego, Respondent was convicted of a violation of  
6 Section 484-488 (Petty Theft) and Section 666 (Petty Theft with a  
7 Prior) of the California Penal Code, crimes involving moral  
8 turpitude which bears a substantial relationship under Section  
9 2910, Title 10, California Code of Regulations, to the  
10 qualifications, functions, or duties of a real estate licensee.

11 VII

12 The crimes of which Respondent was convicted, as  
13 alleged in Paragraphs III, IV, V, and VI, constitutes cause for  
14 denial of Respondent's application for a real estate license  
15 under Sections 480(a) and 10177(b) of the California Business and  
16 Professions Code.

17 VIII

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

24 IX

25 In response to Question 25 of the February 28, 2002  
26 application, to wit: "Have you ever been convicted of any  
27 violation of law?", Respondent answered "No".

1 X

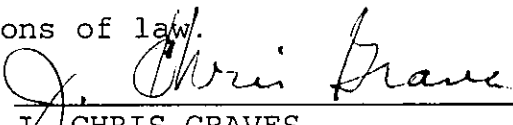
2 Respondent's failure to reveal the conviction set forth  
3 in Paragraphs III, IV, V, and VI, above, in the February 28, 2002  
4 application constitutes the procurement of a real estate license  
5 by fraud, misrepresentation, or deceit, or by making a material  
6 misstatement of fact in said application, which failure is cause  
7 for denial of Respondent's application for a real estate license  
8 under Sections 480(c) and 10177(a) of the California Business and  
9 Professions' Code.

10 PRIOR PROCEEDING

11 XI

12 Effective January 6, 2003, in Case No. H-2757 SD before  
13 the State of California Department of Real Estate, the  
14 application of Respondent for a conditional real estate  
15 salesperson license was denied for violation of Sections 480(a),  
16 480(c), 10177(a), and 10177(b) of the Code.

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

23   
24 J. CHRIS GRAVES  
Deputy Real Estate Commissioner

25 Dated at San Diego, California,  
26 this 2<sup>nd</sup> day of February, 2005.