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DEPARTMENT OF REAL ESTATE

By L. Frost

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of
SUSANA TURIANO CRUZ,
Respondent.

No. H-3201 SD

ORDER GRANTING UNRESTRICTED LICENSE

On December 7, 2005, a Decision was rendered herein denying the Respondent's application for real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on January 28, 2006, and Respondent has operated as a restricted licensee since that time.

On June 5, 2007, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

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

1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of
2 restrictions is granted and that a real estate salesperson license be issued to Respondent subject to
3 the following understanding and conditions:

4 1. The license issued pursuant to this order shall be deemed to be the first renewal
5 of respondent's real estate salesperson license for the purpose of applying the provisions of
6 Section 10153.4.

7 2. Within nine (9) months from the date of this order respondent shall:

8 (a) Submit a completed application and pay the appropriate fee for a real estate
9 salesperson license, and

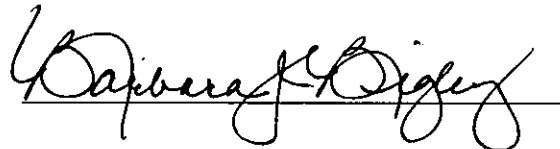
10 (b) Submit evidence of having taken and successfully completed the courses
11 specified in subdivisions (a) (1), (2), (3), (4) and (5) of Section 10170.5 of the Real Estate Law
12 for renewal of a real estate license.

13 3. Upon renewal of the license issued pursuant to this order, respondent shall
14 submit evidence of having taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate
16 license.

17 This Order shall become effective immediately.

18 IT IS SO ORDERED 12-29-08

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20 JEFF DAVI
21 Real Estate Commissioner

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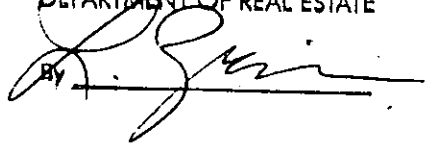
23
24 BY: Barbara J. Bigby
25 Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
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DEPARTMENT OF REAL ESTATE

* * *

By 

In the Matter of the Application of)
) NO. H-3201 SD
SUSANA TURIANO CRUZ,)
) OAH NO. N-2005060129
Respondent.)
_____)

DECISION

The Proposed Decision dated November 14, 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.

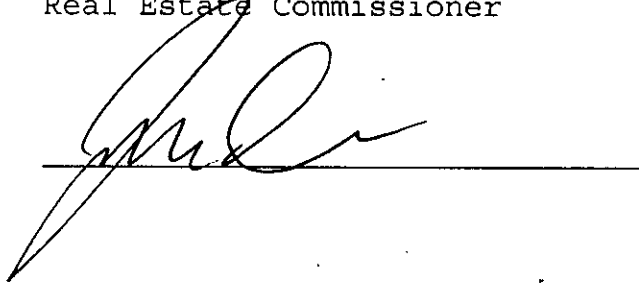
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a 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 DEC 29 2005.

IT IS SO ORDERED 12-7-05.

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of :

SUSANA TURIANO CRUZ,

Respondent.

File No. H-3201 SD .

OAH No. L2005060129

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on August 18, 2005.

David B. Seals, Counsel, represented Complainant, J. Chris Graves, Deputy Real Estate Commissioner, State of California, Department of Real Estate.

Respondent was present and represented herself.

The matter was submitted on August 18, 2005.

FACTUAL FINDINGS

1. J. Chris Graves (Complainant) made Statement of Issues, File No. H-3201 SD, dated May 11, 2005, in his official capacity as the Department's Deputy Real Estate Commissioner and not otherwise against Susana Turiano Cruz (Respondent).

On May 20, 2005, Respondent filed Notice of Defense on Application, requesting a hearing in this matter.

2. On April 29, 2004, 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 of Business and Professions Code section 10153.4.

Respondent signed her application certifying the truth and accuracy under penalty of perjury. In her application, Respondent disclosed her conviction of petty theft. The Department denied Respondent's application for a license as a real estate salesperson.

3. On April 24, 2002, in the Superior Court of the State of California, County of San Diego, in the case entitled *The People of the State of California v. Susana Turiano Cruz*, Case No. S165228, on her plea of guilty, Respondent was convicted of a violation of California Penal Code section 484 (Petty Theft), a misdemeanor.

As a consequence of the conviction, the Court suspended imposition of the sentence for three years on terms and conditions that included, among other things, that she serves one day in custody and pay a fine and restitution in the total amount of \$350.00.

The facts and circumstances underlying the conviction are that Respondent entered a Costco warehouse and took several bottles of champagne without paying for it.

4. The crime of which Respondent was convicted involves moral turpitude and is substantially related to the qualification, functions or duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910.

5. Respondent submitted evidence of explanation, mitigation and rehabilitation.

- On the day of the incident that resulted in her conviction, she had lived overseas for many years; she missed her friends and the way of life in Japan; she decided to get drunk.
- She realizes that she made a mistake and exercised bad judgment; she accepts responsibility for her criminal acts and expresses remorse for her offense.
- The conviction occurred over three years ago. There is no evidence that she has engaged in dishonest conduct or any other misconduct that involves moral turpitude and/or is substantially related to the qualification, functions or duties of a real estate licensee. She has complied with the terms and conditions of probation, including payment of fine and restitution. On December 3, 2003, the Court terminated probation early and expunged her conviction.
- She is licensed as a real estate salesperson in the State of Florida. There is no evidence that this license has been disciplined.
- As a Pilipino-American, she is a coordinator/administrator of a medical mission that provides medical care for poor people in the Philippines. In addition, she is actively involved in the Maria Clara Society, an organization that teaches young people of Pilipino descent about their culture and how to incorporate it into the American way of life.
- Since her conviction, she has completed a two-year contract management, government contracting program at San Diego State University.
- She is 44 years old and has been married almost 19 years. She and her husband have four children, ages 21, 17, 14 and 10 years; her son attends Georgetown University. Over the years, Respondent has held several very responsible positions. She has been "doing loans" for the last 12 years and has worked as a program coordinator for Troy State University. For the

past four years, she has been employed as an employment advisor at the South County Career Center. She has always maintained an excellent employment record.

6. Effective July 23, 2003, in Case No. H-2811, the Real Estate Commissioner denied a real estate salesperson license to Respondent under Business and Professions Code sections 480, subdivision (a) and 10177, subdivision (b).

7. Administrative proceedings to discipline a professional license are intended to protect the public, not punish the licensee. *Hughes v. Board of Architectural Examiners* (1998) 17 Cal. 4th 763.

Business and Professions Code section 10050 states, in pertinent part: "It shall be the principal responsibility of the commission to enforce all laws of this part . . . in a manner which achieves the maximum protection of the purchasers of real property and those persons dealing with real estate licensees."

Complainant argues that despite Respondent's evidence of rehabilitation, insufficient time has passed to establish that her rehabilitation is complete. Citing *In re Gossage* (2000) 23 Cal.4th 1080, 5 P.3d 186, he contends that little weight should be given to Respondent behaving in an exemplary fashion while on criminal probation. His argument is inconsistent with the holding in the case regarding this issue. *In re Gossage* states, in pertinent part:

"Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes or continue addictive behavior while *in prison or while on probation or parole* (emphasis added)." *Id.* at p.1099.

Respondent was on unsupervised probation. There is no evidence that she has ever been in prison, on supervised probation or parole. Given the foregoing, Complainant's argument is rejected.

8. According to *In re Gossage, supra*, 23 Cal.4th 1080 (2000) at p. 1098, Respondent is morally fit to practice real estate only if the evidence shows that she is not the same person who behaved so poorly in the past and only if she has since behaved in exemplary fashion over a meaningful period of time. This heavy burden is commensurate with the gravity of her crimes.

Given the Department's obligation to protect the public, Complainant has reason to be concerned about Respondent's conviction. Barely one year after her conviction, the Department denied Respondent's prior application for a license as a real estate salesperson. Nevertheless, it is clear from the evidence that Respondent's criminal acts are an aberration in her life. She has no other criminal history. It has been over three years since her conviction. Not only has she complied with the terms and conditions of probation; less than two years after the conviction, the Court expunged the conviction and terminated her

probation early. She has substantially complied with the Department's criteria for rehabilitation (Cal. Code Regs., tit. 10, § 2911).

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), the crime of which Respondent was convicted constitutes cause to deny her application for a real estate salesperson license, by reason of Findings 2, 3 and 4.

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

ORDER

The application for a real estate salesperson license of Respondent Susana Turiano Cruz is denied; provided, however, the right to a restricted real estate salesperson license is granted. Any restricted real estate salesperson license issued to Respondent Susana Turiano Cruz 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 Susana Turiano Cruz'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 Susana Turiano Cruz 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 Susana Turiano Cruz 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 Susana Turiano Cruz has submitted the required evidence of course completion, and the Commissioner has given written notice to Respondent Susana Turiano Cruz that the suspension has been lifted.

2. Pursuant to Business and Professions Code section 10154, if Respondent Susana Turiano Cruz has not satisfied the requirements for an unqualified license under Business and Professions Code section 10153.4, Respondent Susana Turiano Cruz 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.

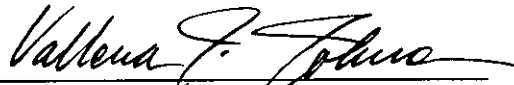
3. The restricted license issued to Respondent Susana Turiano Cruz may be suspended prior to hearing by Order of the Real Estate Commissioner in the event Respondent Susana Turiano Cruz is convicted or enters a plea of nolo contendere to a crime that is substantially related to Respondent Susana Turiano Cruz's fitness or capacity as a real estate licensee.

4. Respondent Susana Turiano Cruz 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.

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

DATED: November 14, 2005


VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)
7

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DEPARTMENT OF REAL ESTATE

By 

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

11 * * *

12 In the Matter of the Application of)
13 SUSANA TURIANO CRUZ,) NO. H-3201 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 Statement of Issues
18 against SUSANA TURIANO CRUZ (hereinafter "Respondent"), is
19 informed and alleges as follows:

20 I

21 Respondent made application to the Department of Real
22 Estate of the State of California for a real estate salesperson
23 license on or about April 24, 2004, with the knowledge and
24 understanding that any license issued as a result of said
25 application would be subject to the conditions of Section
26 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 and not otherwise.

III

On or about April 24, 2002, in the Superior Court, County of San Diego, Respondent was convicted of a violation of Section 484 of the California Penal Code (Theft), a crime involving moral turpitude and/or 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 in Paragraph III, 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.

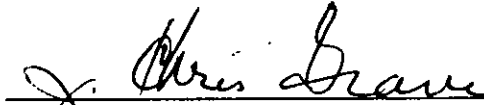
PRIOR ADMINISTRATIVE ACTION

On June 26, 2003, effective July 23, 2003 in case No. H-2811 SD, the Real Estate Commissioner denied a real estate salesperson license to Respondent under Sections 480(a) and 10177(b) of the California Business and Professions Code.

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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.



J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 11th day of May, 2005.