

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**

MAY 06 2019

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In the Matter of the Application of:

DEICY ANDRADE DOMINGUEZ,

Respondent.

) DRE No. H-3211 FR

) OAH No. 2019010061

DEPARTMENT OF REAL ESTATE

By X. Knapp

DECISION

The Proposed Decision dated April 11, 2019, 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.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

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If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

**MAY 27 2019**

This Decision shall become effective at 12 o'clock noon on \_\_\_\_\_.

IT IS SO ORDERED May 3, 2019

DANIEL J. SANDRI  
ACTING REAL ESTATE COMMISSIONER

*Daniel J. Sandri*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

DEICY ANDRADE DOMINGUEZ,

Respondent.

Case No. H-3211 FR

OAH No. 2019010061

**PROPOSED DECISION**

Administrative Law Judge Sean Gavin, Office of Administrative Hearings, State of California, heard this matter on March 25, 2019, in Sacramento, California.

Kyle T. Jones, Real Estate Counsel, Department of Real Estate (DRE), represented Brenda Smith, Supervising Special Investigator for the State of California (complainant).

Deicy Andrade Dominguez (respondent) appeared on her own behalf.

The record was closed and the case was submitted for decision on March 25, 2019.

**FACTUAL FINDINGS**

1. On February 26, 2018, respondent submitted a Salesperson License Application (application) to the DRE. No license has been issued.

2. On December 20, 2018, complainant, acting solely in her official capacity, filed a statement of issues wherein she alleged cause to deny respondent's application based on criminal convictions for driving without a license, driving under the influence, and theft, and for failing to disclose a conviction in her application.

3. Respondent timely filed a Notice of Defense pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

### *Respondent's Convictions*

4. On January 27, 2003, in the Superior Court of California, County of Kings, Case No. 02CM4988, respondent was convicted, on her guilty plea, of violating Vehicle Code section 12500, subdivision (a) (driving without a valid license), a misdemeanor.<sup>1</sup> She did not report this conviction in her application. Respondent was placed on probation and ordered to pay fines and fees of \$488, which were converted to 72 hours of community service, as well as restitution in the amount of \$100.

On June 11, 2003, respondent's probation was revoked on grounds that she failed to complete her community service hours and failed to pay the court-imposed fees and fines. The court modified respondent's probation, rescinded the community service requirement, and ordered respondent to serve 18 days in jail. Respondent served that time in full.

The circumstances underlying respondent's conviction occurred on November 30, 2002, when respondent drove without a valid driver's license. Respondent's driver's license was invalidated due to multiple speeding tickets.

5. On July 1, 2009, in the Superior Court of California, County of Tulare, Case No. TCM223115, respondent was convicted, on her plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor (DUI). Respondent was sentenced to serve 10 days in jail, ordered to pay fines and fees, and ordered to complete a three-month DUI school. Respondent was also placed on informal probation for five years.

The circumstances underlying respondent's conviction occurred on June 6, 2009, when respondent drove while under the influence of alcohol. Respondent was driving out of a restaurant parking lot when she hit a curb. A police officer observed this, pulled respondent over, and arrested her for DUI. Her blood alcohol content was 0.10 percent.

6. On January 22, 2013, in the Superior Court of California, County of Kings, Case No. 12CM3876, respondent was convicted, on her plea of nolo contendere, of violating Penal Code section 484, subdivision (a) (theft). Respondent was sentenced to serve one day in jail, was ordered to pay restitution, fines, and fees, and was placed on conditional release probation under court supervision for three years. On April 22, 2015, respondent was released from probation and her conviction was dismissed pursuant to Penal Code section 1203.4.

The circumstances underlying respondent's conviction occurred on September 8, 2012. On that date, respondent was shopping at Kohl's when she took \$240 worth of

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<sup>1</sup> On the same day, respondent was also convicted of violating Vehicle Code section 40508, subdivision (a) (violation of promise to appear). This conviction was not pled in the Statement of Issues and is not addressed here.

clothing and jewelry into a fitting room, concealed the items, and left the store without paying for them. She was arrested.

### *Respondent's Evidence*

7. Respondent is 37 years old. She has been married since 2012, and she has two biological children and two children via marriage. She presently works as an accounting clerk, and she wants to work in real estate to build a family business with her children. Three of her four children are adults. None of them are presently licensed by the DRE, but respondent is encouraging one of her sons to pursue real estate.

8. Respondent received her first conviction 16 years ago, when she was 21 years old. She had "a lot of speeding tickets," and eventually lost her driver's license as a result. When she was convicted for driving without a valid license, she believed the conviction was related to the underlying speeding tickets. She testified that she did not remember the conviction at the time she completed her application, but she did recall serving the 18-day jail sentence. She also testified that the conviction "wasn't in [her] background," as she had applied for other jobs in the past and a criminal background check had never revealed the conviction or prevented her from obtaining those positions.

9. Respondent's DUI conviction occurred approximately 10 years ago. In June 2009, respondent went on a date with a neighbor on the condition that he would be the designated driver. Once there, respondent observed her date drinking alcohol to excess, and she stopped drinking alcohol so she would be able to drive if necessary. Prior to leaving, respondent believed she was sober enough to drive. She pulled out of the parking lot and hit a curb. A police officer observed this, pulled respondent over, and subsequently arrested her for DUI. Respondent's blood alcohol content was 0.10 percent.

10. Respondent's theft conviction occurred six years ago. While she was shopping in Kohl's with her 13-year-old son, she took some clothing and jewelry into a fitting room, concealed them, and then left the store without paying for the items. Respondent stole five shirts for her son and two necklaces for herself. The total value of the stolen items was \$240. Respondent expressed remorse for her crime, stating that she was embarrassed and humiliated by it. She testified that she knew stealing was wrong and did not know why she had done it.

11. Regarding her criminal record, respondent acknowledged, "on paper I know I look bad, but I'm not that person." She explained that her past mistakes "are not who I am today." She is dedicated to her husband and children and has not committed a crime in more than six years. Respondent is embarrassed and humiliated by her behavior, and she has used it as an opportunity to teach her children about accepting the consequences of one's actions.

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## CHARACTER WITNESSES

12. Respondent submitted signed and dated statements of support from three friends:

(a) Marlene Solis has known respondent for approximately seven years and considers her to be "an outstanding citizen and a selfless person." Ms. Solis has witnessed respondent raising money and volunteering for "A Very Special Needs Christmas," an informal charitable project that Ms. Solis coordinates to provide Christmas gifts to children and adults living in a special-needs home. Ms. Solis is aware of respondent's convictions for DUI and theft.

(b) Leah Garcia has known respondent for 10 years. Ms. Garcia used to work with respondent and trained her as an office manager. Ms. Garcia characterized respondent as "a dedicated, positive and loyal employee, who handled many large responsibilities that required trustworthiness and confidentiality." Ms. Garcia has observed respondent set "a positive example for her children" and "encourage them to become productive members of society." Ms. Garcia's letter does not indicate whether she is aware of respondent's convictions.

(c) Amanda Cordero, who has known respondent for 12 years, characterized respondent as "dedicated, organized, dependable, responsible, honest, [and] courteous." Ms. Cordero's letter does not indicate whether she is aware of respondent's convictions.

### *Discussion*

13. Applicants are required to disclose all convictions on their applications to the DRE. The DRE may deny an applicant if the applicant knowingly made a false statement or made a material misrepresentation in an application. (Bus. & Prof. Code, §§ 480, subd. (d) and 10177, subd. (a).) Respondent failed to disclose her 2003 conviction for driving without a valid license in her license application. She testified that she did not remember the conviction at the time she completed her application, but this testimony is not credible because as a result of the conviction she served 18 days in jail, which she did recall. She also testified that the conviction "wasn't in [her] background" when she applied for previous employment. This indicates that she was aware of the conviction, as its absence on other background checks was notable to her.

14. Pursuant to California Code of Regulations, title 10, section 2911, the DRE has adopted criteria for evaluating whether an applicant is rehabilitated for purposes of issuance of a license. (Bus. & Prof. Code, § 482, subd. (b)). The relevant criteria include:

(1) The time that has elapsed since commission of the act(s) or offense(s).

(2) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant, or escheat to the State of these monies or other properties if the victim(s) cannot be located.

(3) Expungement of criminal convictions.

[¶] . . . [¶]

(5) Successful completion or early discharge from probation or parole.

(6) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances and/or alcohol.

(7) Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(8) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought.

(9) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

[¶] . . . [¶]

(12) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

[¶] . . . [¶]

(14) Change in attitude from that which existed at the time of the conduct in question [ . . . ].

15. Respondent satisfied many of the rehabilitation criteria: Her convictions occurred, respectively, 16 years ago, 10 years ago, and six years ago; she has paid all the court-imposed restitution; her theft conviction has been expunged; she is no longer on probation, having received early discharge from probation related to her most recent conviction; she has paid all the court-imposed fines and penalties; she has a stable family life and has fulfilled her parental and familial responsibilities subsequent to her theft conviction;

she has paid the debts to others adjudicated against her; and she has involved herself in an informal charitable project.

16. Respondent did not satisfy other rehabilitation criteria: Her first two convictions have not been expunged; she did not submit evidence of abstinence from the use of alcohol despite her DUI conviction being attributable in part to the use of alcohol; and she did not submit evidence of completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement. Finally, she did not submit evidence of a change in attitude from that which existed at the time of her most recent conviction. (See *Singh v. Davi* (2012) 211 Cal.App.4th 141, 149 [describing a change in attitude as “[o]f the many criteria, arguably the most important in predicting future conduct”].) Although she could not explain why she shoplifted, she accepted responsibility and she has had no further related incidents or convictions. She has the support of her family and friends, she has worked to begin a new career, and she has demonstrated stability since her last conviction.

17. The DRE must have assurance that its licensees will be “honest, truthful and of good reputation.” (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.) When all the evidence is considered, respondent has demonstrated sufficient rehabilitation such that it would not be against the public interest to issue her a real estate license. To protect the public, however, and to ensure respondent is capable of practicing as an “honest and truthful” real estate agent without oversight, it would not be contrary to the public health, safety, or welfare to issue her a restricted real estate salesperson license.

## LEGAL CONCLUSIONS

1. An applicant for a license bears the burden of proving that she should be granted a license. (*Martin v. Alcohol Beverage Control Appeals Board* (1959) 52 Cal.2d 238.) At a hearing regarding the denial of an application, the respondent must produce proof at the hearing to “show compliance” with the statutes and regulations outlined in the Statement of Issues. (Gov. Code, § 11504.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

2. Pursuant to Business and Professions Code sections 480, subdivision (d), and 10177, subdivision (a), the DRE may “deny a license . . . on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license,” or if the applicant “attempted to procure a real estate license . . . for himself or herself . . . by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.” To “knowingly” make a false representation of facts, “a person need only have knowledge of the falsity of the facts certified when making or signing the certificate.” (*Brown v. State Department of Health* (1978) 86 Cal.App.3d 548, 556.) As articulated in Factual Findings 4, 8, and 13, there is cause under Business and Professions Code sections 480, subdivision (d), and 10177, subdivision (a), to deny respondent’s application for a real estate salesperson

license because she made a false statement of fact in her application and she attempted to procure her license by making a material misstatement of fact.

3. Pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), the DRE may deny a license application when the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee. Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a), a crime is substantially related to the qualifications, functions, or duties of a licensee if it involves:

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

[¶] . . . [¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

[¶] . . . [¶]

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

Respondent's conviction for theft is substantially related to the qualifications, functions, or duties of a licensee because it involved "the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person." Respondent's convictions for driving without a valid license<sup>2</sup> and DUI are substantially related to the qualifications, functions, or duties of a licensee because they each involved "[d]oing of any unlawful act with the . . . intent or threat of doing substantial injury to the person or property of another." Taken together, respondent's crimes are substantially related to the qualifications, functions, or duties of a licensee insofar as they indicate a pattern of repeated and willful disregard of law. As articulated in Factual Findings 4 through 6, respondent's convictions for driving without a license, DUI, and theft are substantially related to the qualifications, functions, or duties of a licensee and therefore provide cause to deny respondent's application. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(1), (2), and (10).)

4. Pursuant to Business and Professions Code sections 480, subdivision (a)(2), and 10177, subdivision (j), the DRE may deny a license application when the applicant has done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit

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<sup>2</sup> Respondent's driver's license was suspended due to multiple instances of speeding. By driving without a valid license under those circumstances, respondent posed a threat to the public.

herself, or substantially injure another. As articulated in Factual Findings 6 and 13, respondent's conduct underlying her theft conviction constituted dishonesty, fraud, and deceit with the intent to substantially benefit herself, and therefore provides cause to deny respondent's application.

5. As articulated in Factual Findings 15 through 17, respondent has demonstrated sufficient rehabilitation to warrant the issuance of a restricted real estate salesperson license at this time.

## ORDER

Respondent Deicy Andrade Dominguez's application for a real estate salesperson license is DENIED; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to the 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 authority of section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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 this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: April 11, 2019

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SEAN GAVIN  
Administrative Law Judge  
Office of Administrative Hearings