

FILED
FEB 09 2023
DEPARTMENT OF REAL ESTATE
By J. Taggart

In the Matter of the Application of:

TRISHA JOYCE LANE,

Respondent.

) DRE No. H-3448 FR
)
) OAH No. 2022100524
)
)
)

The Proposed Decision dated January 10, 2023, 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.

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.

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.

This Decision shall become effective at 12 o'clock noon on MAR 01 2023.

IT IS SO ORDERED 2. 8. 23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

In the Matter of the Application of:

TRISHA JOYCE LANE, Respondent

Case No. H-3448 FR

OAH No. 2022100524

PROPOSED DECISION

Marcie Larson, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, conducted a videoconference hearing in this matter on January 3, 2023, from Sacramento, California.

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

Respondent Trisha Joyce Lane was present and represented herself.

Evidence was received, the record closed, and the matter submitted for decision on January 3, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On or about December 3, 2021, respondent filed with the Department an application for a real estate salesperson license (application). No license has been issued.
2. On September 22, 2022, complainant signed and thereafter filed the Statement of Issues in her official capacity. Complainant seeks to deny respondent's application based on her criminal conviction for driving under the influence of alcohol (DUI) and hit and run.¹
3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

¹ As a matters in aggravation, complainant listed a May 10, 2017 conviction that was dismissed on September 6, 2022, pursuant to Penal Code section 1203.4 and a March 2, 2007 conviction. Under Business and Professions Code section 480, subdivisions (a) and (c), these convictions and the underlying conduct cannot be considered as a basis for denial. As a result, these convictions are not discussed in this Proposed Decision.

Respondent's Criminal Convictions

4. On May 10, 2017, in the Superior Court of California, County of Kern, respondent was convicted, on her nolo contendere plea, of hit and run, a violation of Vehicle Code section 20002, subdivision (a) and DUI, a violation of Vehicle Code section 23152, subdivision (a), misdemeanors. Respondent was sentenced to 60 days in jail.² She was ordered to enroll in and complete a First Offender DUI program. Respondent was also assessed fines and fees.

5. The circumstances underlying the convictions occurred on January 6, 2017. Respondent was driving her vehicle out of a parking lot. She hit several parked cars and left the scene on foot. An officer from the Bakersfield Police Department was dispatched to the scene. After speaking to witnesses, the officer located respondent across the street from the parking lot, inside a bar. Respondent was arrested and placed in a patrol car. Respondent admitted that she had hit parked vehicles and fled because she "panicked."

The officer noticed respondent had watery eyes, slurred speech, and smelled of alcohol. Respondent admitted to drinking alcohol before she drove her vehicle. The officer administered a series of field sobriety tests, which respondent failed to satisfactorily perform. Respondent submitted to a Preliminary Alcohol Screening, which registered her blood alcohol level at 0.15 percent. She also agreed to submit to a blood test. Respondent was arrested for DUI.

² Respondent was sentenced in another criminal case the same day and placed on three years of supervised probation. This case was dismissed on September 6, 2022, pursuant to Penal Code section 1203.4.

6. On February 27, 2017, in the Superior Court of California, County of Kern, respondent was convicted, on her nolo contendere plea, of hit and run, a violation of Vehicle Code section 20002, subdivision (a), misdemeanor. Respondent was sentenced to 8 days in jail. She was placed on three years of probation. She was also ordered to pay fines and restitution.

7. The circumstances underlying the conviction occurred on January 21, 2017. Officers from the Bakersfield Police Department were dispatched to a Shell gas station to investigate a hit and run. When the officers arrived, the driver of the vehicle that contacted the police reported that her vehicle was hit by another vehicle while she was stopped waiting for the car wash to become available. The driver confronted the woman who hit her vehicle, later identified as respondent. However, when the driver mentioned calling the police, respondent left the scene. The driver had a video of the exchange. Police later located respondent and charges were filed against her for hit and run.

Respondent's Evidence

8. Respondent is 38 years old. In 2017, she was in a "toxic" relationship. She was using alcohol to cope. Respondent's parents took custody of her two children because of her alcohol abuse. In January 2017, she had several arrests related to her alcohol abuse. After respondent's February 26, 2017 DUI arrest, she stopped drinking alcohol and entered a one-year residential sober living rehabilitation program at Legacy Village. Respondent successfully completed the program. She also completed her court-imposed probation.

9. Through treatment, respondent realized she was using alcohol to cope with past trauma and her difficult relationship. Respondent realized she was strong

and did not need alcohol to cope. Respondent developed a support system through Celebrate Recovery and her church. Respondent received her "12 chips." Respondent also sought additional counseling after she completed her rehabilitation program. Respondent continues to address the underlying causes of her alcoholism, to ensure she has a strong foundation. Respondent has dealt with traumatic events since she became sober, including the death of a close relative and has not turned to alcohol to cope. Instead, she seeks the support of her friends and family. She takes care of herself by exercising regularly.

10. Respondent returned to school in 2018 and obtained her cosmology license. Respondent has also worked in property management for many years. She currently works part-time for a construction company as a project manager and part-time as a cosmologist. She has been repeatedly told that she would do well as a real estate salesperson. Respondent has worked hard to address her past mistakes. She would like to obtain her license so she can make a better life for her and her teenage children.

Analysis

11. The Department has adopted criteria for determining whether an applicant has been rehabilitated since committing the acts for which denial of licensure is sought. (Cal. Code Regs., tit. 10, § 2911.) The following criteria relevant to respondent are:

(1) The time that has elapsed since commission of the acts(s) or offense(s):

(A) The passage of less than two years after the most recent criminal conviction or act of the applicant that is a cause of

action in the Bureau's Statement of Issues against the applicant is inadequate to demonstrate rehabilitation.

(B) Notwithstanding subdivision (a)(1)(A), above, the two year period may be increased based upon consideration of the following:

(i) The nature and severity of the crime(s) and/or act(s) committed by the applicant.

(ii) The applicant's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee. However, no rehabilitation shall be required where the sole proven basis or bases for denial of an application is an expunged conviction as described in Business and Professions Code Section 480(c).

(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.

[¶] . . . [¶]

(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.

[¶] . . . [¶]

(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 as evidenced by the following:

(A) Testimony and/or other evidence of rehabilitation submitted by the applicant.

(B) Evidence from family members, friends and/or other persons familiar with applicant's previous conduct and with his or her subsequent attitudes and/or behavioral patterns.

(C) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to applicant's social adjustments.

(D) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(E) Absence of subsequent felony convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.

12. Considering the Department's criteria, respondent engaged in serious misconduct. She drank alcohol and drove her vehicle. She also left the scene of vehicle accidents to hide her alcohol consumption. After her last arrest, respondent realized she needed help. She voluntarily entered a one-year rehabilitation program. She has been sober for almost six years. Respondent built a strong foundation with the support of her family, friends, and church community. She returned to school and obtained her cosmetology license. She has worked in trusted positions in property management and as a project manager. A real estate salesperson license will allow respondent to further her career goals and provide for her family.

13. The objective of an administrative licensing proceeding is to protect the public. Such proceedings are not for the primary purpose of punishment. (*See Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) Based on the evidence,

respondent demonstrated that it would be consistent with the public interest, safety, or welfare to issue her a restricted real estate salesperson license.

LEGAL CONCLUSIONS

Burden of Proof

1. The burden of proof is on the applicant for a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 265.) In addition, rehabilitation is akin to an affirmative defense; the burden of proof of establishing an affirmative defense is on the proponent of that defense. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

Applicable Law

2. Business and Professions Code section 480, provides in pertinent part:

(a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been

convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. [...]

[¶...¶]

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

3. Business and Professions Code section 10177, subdivision (b), provides that an application for a real estate license may be denied if the applicant has "entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee"

4. In California Code of Regulations, title 10, section 2910, the Department has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions, or duties of a licensee. Subdivision (a) of section 2910, in relevant part, provides that a conviction will be deemed substantially related if it evidences:

[¶] . . . [¶]

(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.

5. Business and Professions Code section 10177, subdivision (j), provides that an application for a real estate license may be denied if the applicant has "engaged in any other conduct, whether of the same or of a different character than specified in this section, that constitutes fraud or dishonest dealing."

Cause for Denial

6. As set forth in Factual Findings 4 through 7, respondent was convicted of DUI and hit and run. Her crimes are substantially related to the qualifications, functions, and duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(8). Additionally, respondent's convictions considered together are substantially related to the qualifications, functions, or duties

of a licensee because they constitute "conduct which demonstrates a pattern of repeated and willful disregard of law." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).) Therefore, cause exists to deny respondent's application for a real estate salesperson license under Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b).

7. As set forth in Factual Findings 4 through 7, respondent was convicted of hit and run. Her conduct constitutes fraud and dishonest dealing. Therefore, cause exists to deny respondent's application for a real estate salesperson license under Business and Professions Code 10177, subdivision (j).

8. Based on the Factual Findings as a whole, and specifically, Factual Findings 8 through 13, respondent has shown that she is sufficiently rehabilitated to be granted a restricted license, pursuant to the terms outlined below.

ORDER

The application of respondent Trisha Joyce Lane for a real estate salesperson license in the State of California 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 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 Business and Professions Code section 10156.6:

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 notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner. 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.

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 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 not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations, or

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restrictions attaching to the restricted license until three (3) years have elapsed from the date of issuance of the restricted license to respondent.

DATE: January 10, 2023

Marcie Larson
Marcie Larson (Jan 10, 2023 12:51 PST)

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings