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FILED  
MAY 17 2001

DEPARTMENT OF REAL ESTATE  
*Laurie L. Zan*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-3533 SAC
	)	
KELLI LYNN COLLINS,	)	OAH No. N-2000100225
	)	
Respondent.	)	

DECISION AFTER REJECTION

This matter came on for hearing before William O. Hoover, Administrative Law Judge of the Office of Administrative Hearings, in Sacramento, California, on December 18, 2000.

James L. Beaver, Counsel, represented the Complainant.

Respondent KELLI LYNN COLLINS appeared in person without counsel.

Evidence was received, the record was closed, and the matter was submitted.

On January 12, 2001, the Administrative Law Judge rendered a Proposed Decision (hereinafter "the Proposed Decision") which I declined to adopt as my Decision herein. Pursuant to Section 11517 of the Government Code of the State of

1 California, Respondent was served with notice of my  
2 determination not to adopt the Proposed Decision along with a  
3 copy of said Proposed Decision. Respondent was notified that  
4 the case would be decided by me upon the record, the transcript  
5 of proceedings held on December 18, 2000, and upon written  
6 argument offered by Respondent and Complainant.

7 On April 9, 2001, written argument requesting leniency  
8 was submitted on behalf of Respondent. Written argument has  
9 been submitted on behalf of Complainant.

10 I have given careful consideration to the record in  
11 this case, including the transcript of proceedings of  
12 November 15, 2000, the documentary exhibits, and written  
13 argument offered by Respondent and Complainant.

14 The following shall constitute the Decision of the  
15 Real Estate Commissioner in these proceedings.

16 FACTUAL FINDINGS

17 1. Paragraphs 1 through 10, inclusive, of the  
18 "Factual Findings" in the Proposed Decision are hereby adopted.

19 2. Respondent has made significant and substantial  
20 strides towards rehabilitation. It has been nine years since  
21 Respondent's felony convictions. The term of probation has  
22 expired. Respondent no longer associates with the person who  
23 supplied her the drugs. Respondent has, within the past two  
24 years, taken courses in real estate principles and real estate  
25 finance. Since her conviction came to light, Respondent has  
26 discussed it with her supervising broker at Prudential  
27 California Realty. Respondent's supervising broker submitted a

1 letter of recommendation on behalf of Respondent. That letter  
2 refers to Respondent as a "devoted participant in Prudential  
3 California Realty's training program. That letter also says of  
4 Respondent: "She has been a reliable, trustworthy and committed  
5 addition to our working staff of sales associates and it has  
6 been a pleasure having her with our firm." Respondent submitted  
7 two letters from other Prudential California Realty agents, one  
8 of whom has been her "mentor" since approximately March, 2000.  
9 The letters attest to Respondent's professionalism and positive  
10 personal traits. Respondent's employer at "Ride Snowboards"  
11 also submitted a character reference on her behalf and described  
12 her as "extremely reliable and trustworthy in all professional  
13 aspects of her work." Respondent has also participated in  
14 community activities such as "Toys For Tots" and other charity  
15 functions through her employer.

16           3. But the Criteria of Rehabilitation within Section  
17 2912 of Chapter 6, Title 10, California Code of Regulations  
18 ("the Regulations") have not yet been fully satisfied.  
19 Respondent's felony convictions have not been reduced or  
20 expunged. Respondent has submitted no competent evidence, other  
21 than her own testimony, of any change in attitude from that  
22 which existed at the time of the criminal acts resulting in  
23 Respondent's convictions. On the contrary, what emerges from  
24 the facts is a picture of an individual who has succeeded in  
25 avoiding detection of her criminal past by simply failing to  
26 disclose her convictions in situations where disclosure would be  
27 appropriate and/or required. In each instance, Respondent



1           2.     Notwithstanding the matters set forth in  
2 Paragraph 2 of the Factual Findings, above, the Criteria of  
3 Rehabilitation set forth in Section 2912 of the Regulations  
4 remain partially unsatisfied by reason of the matters set forth  
5 in Paragraph 3 of the Factual Findings, above.

6           3.     It would be contrary to the public interest to  
7 permit Respondent to retain a real estate salesperson license,  
8 even on a restricted basis.

9                                 ORDER

10                                All licenses and license rights of Respondent  
11 KELLI LYNN COLLINS under the Real Estate law are revoked.

12                                This Decision shall become effective at 12 o'clock  
13 noon on                    June 6                    , 2001.

14                                IT IS SO ORDERED May 2, 2001.

15   PAULA REDDISH ZINNEMANN  
16   Real Estate Commissioner

17   *Paula Reddish Zinnemann*  
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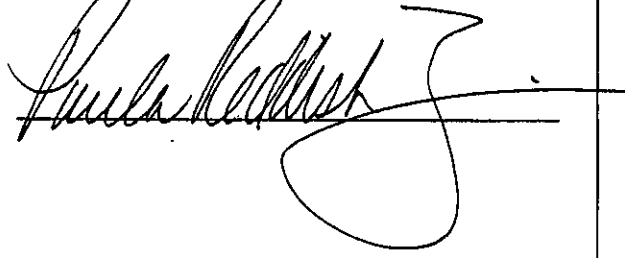
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Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of December 18, 2000, at the Sacramento office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Sacramento office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: January 24, 2001

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KELLI LYNN COLLINS

Respondent.

No. H-3533 SAC

OAH No. N2000100225

**PROPOSED DECISION**

This matter was heard by William O. Hoover, Administrative Law Judge, Office of Administrative Hearings, on December 18, 2000, in Sacramento, California.

James L. Beaver, Real Estate Counsel III, represented Charles W. Koenig, complainant.

Kelli Lynn Collins, respondent, appeared and represented herself.

The matter was submitted on December 18, 2000.

**FACTUAL FINDINGS**

1. Charles W. Koenig, Deputy Real Estate Commissioner, Department of Real Estate ("Department"), State of California, made and filed this Accusation in his official capacity, based on two circumstances. First, the Department determined that Ms. Collins had been convicted of violations of Health and Safety Code section 11378 (possession of methamphetamine for sale) and Penal Code section 1203.073(b)(2) (enhancement for possession of specified quantity of methamphetamine). Secondly, Ms. Collins failed to disclose the convictions in her application for a real estate license.



2. Kelli Lynn Collins ("respondent") submitted to the Department an application for a real estate salesperson's license, dated October 8, 1999, pursuant to Business and Professions Code section 10153.3. The Department granted a license effective December 8, 1999, subject to Business and Professions Code section 10153.4.

3. On December 12, 1991, before the Sacramento Superior and Municipal Court, in docket no. 91F07662, respondent was convicted, on her plea of *Guilty*, of three felony counts of violating Health and Safety Code section 11378 (possession of methamphetamine for sale), and admitted enhancing allegations (Penal Code section 1203.073) as to each count. On January 12, 1992, the court followed the recommendation of the probation department and suspended the imposition of judgement and sentence. Respondent was placed on formal probation for five (5) years, subject to specified terms and conditions. These terms and conditions included a requirement that respondent serve one year in county jail and pay certain fines and fees. Although the convictions called for a mandatory commitment to state prison, the court found unusual circumstances based on respondent's age (19), lack of any criminal record, and an early admission of wrongdoing. Additional mitigation was found in the fact that respondent had previously led a productive life as evidenced by her graduation from high school, attendance at college and employment status. On March 18, 1992, following receipt of a psychological report, the court modified the terms and conditions to reduce the period of incarceration to six (6) months. The offenses involve moral turpitude and are substantially related to the qualifications, functions and duties of the licensed activity.

4. The facts and circumstances of the controlled substance violations are that respondent became romantically involved with an individual who trafficked in illegal drugs and allowed herself to become engaged in drug trafficking to preserve the relationship. On three occasions (April 25, April 26 and May 2, 1991) respondent received from that individual approximately five ounces of methamphetamine for purposes of sale. At that time the individual was acting as a confidential informant for law enforcement. Respondent was subsequently arrested and convicted. There was no evidence of respondent's personal use of drugs and it was not demonstrated that she profited personally from the sale of drugs.

5. The psychological evaluation conducted during the criminal proceedings revealed that respondent's conduct was situational in nature and a manifestation of a "personality syndrome typical of adolescence" in that she had a tendency towards egocentricity and immaturity. The evaluation noted that respondent did not have a propensity toward socially deviant behavior and the evaluator further opined that "she has learned her lesson."

6. Since her conviction, respondent has lived a law-abiding life and maintained employment while continuing to attend college. Her primary employment has been as a waitress until December 1999 when she applied for and received a real estate salesperson's license from the Department. The initial sponsoring broker was Pacific Preferred Property, a licensed broker.

7. The license application contains twenty-seven (27) questions that require responses from an applicant. Questions #24-27 relate to prior licensure actions (#24) and to violations of law (#25-27) and are preceded by a highlighted section that instructs the applicant to “[c]arefully read and provide detailed answers to questions #24-26.” This section also provides a detailed definition of the word “conviction” and clearly states that “[a]ll convictions must be disclosed whether or not the plea...was set aside, the conviction...dismissed, or expunged, or if you have been pardoned.” Question #27 requests detailed information regarding a yes answer to questions #24-26. To question #25 as to whether respondent had ever been convicted of any violation of law, respondent checked the box marked “NO.” At the end of the application is a section entitled “Salesperson Certification- please read carefully.” This section states that the signator to the application certifies under penalty of perjury that the answers given are true and correct.

8. After the Department issued respondent’s license an investigation revealed her criminal convictions. Respondent was the subject of a confidential interview and explained that she believed they had been dismissed. She further indicated that her work as a waitress in Nevada required her to have a police clearance and that since she was permitted to work she “assumed everything was cleared up.” During the hearing respondent testified generally in conformity with her interview statement. Respondent also testified that she failed to disclose her convictions on three occasions when crossing the border into Canada and suffered no consequence. Respondent’s statements that she believed her convictions had been dismissed were based on assumptions that her criminal attorney was supposed to take care of them. However, respondent never contacted her attorney after she completed her probation and never made any inquiry regarding the reduction of the charges and dismissal of the convictions. Further, even if the facts are as stated by respondent, the clear language within the application does not provide relief from the reporting requirement.

9. Respondent has, since this matter arose, contacted her former attorney and begun preparation of the necessary paperwork to expunge her criminal convictions pursuant to Penal Code section 1203.4.

10. Respondent currently works for Prudential California Realty and works 20-30 hours per week as a sales agent. She has obtained single listings for sale and, as of the hearing date, was involved in four (4) offers to purchase real estate. She has closed escrow in three (3) real estate transactions. Respondent continues to work as a waitress and has been employed as a salesperson and manager for “Ride Snowboards,” a company that sells snowboards and outerwear, for the past two years (seasons).

11. Respondent admitted that she did not disclose her criminal background to any of her employers. Although since this matter has come to light, respondent has discussed it with the supervising broker at the realty company where she is employed. That individual is highly complimentary of respondent describing her as “a devoted participant in Prudential California Realty’s training program.” She further stated that respondent “has been a reliable, trustworthy and committed addition to our working staff and it has a pleasure having her with our firm.” This expression of confidence and support is viewed as extremely

significant and given great weight. Likewise, respondent submitted two letters from other realtors, one of whom has been her mentor since approximately March 2000. The letters attest to respondent's professionalism and positive personal traits. Respondent's employer at "Ride Snowboards" also submitted a character reference on her behalf and described her as "extremely reliable and trustworthy in all professional aspects of her work." Respondent has also participated in community activities such as "Toys for Tots" and other charity functions through her employer.

12. Respondent testified that she has, within the past two years, taken courses in real estate principles and real estate finance, but provided no documentary evidence showing completion dates. Nor did respondent submit any evidence of her status regarding compliance with Business and Professions Code section 10153.4.

13. Respondent has made significant and substantial strides towards rehabilitation. The evidence supports a finding that respondent has developed into a productive, law-abiding individual who is unlikely to re-offend. Respondent's behavior before her criminal involvement compared with her subsequent behavior validates the earlier psychological evaluation. But for her lack of candor in failing to disclose her criminal convictions on the real estate application, the convictions alone would present little impediment to the retention of her license. What emerges from the facts is a picture of an individual who has succeeded in avoiding detection of her criminal past by simply failing to disclose her convictions in situations where disclosure would be appropriate and/or required. In each instance, respondent appears to have gambled that her convictions would not be discovered, and won. Her assumptions that the convictions were taken care of by her attorney were naïve at best. And, having been successful in the past, it is not unreasonable to conclude that she made a similar gamble when filling out the application for a real estate salesperson's license. While her failure to disclose is serious and suggests she is still capable of exercising poor judgement, it must be weighed against her present activities and demonstrated behavior over the past nine (9) years.

## LEGAL CONCLUSIONS

1. Business and Professions Code sections 480(a) and 10177(b) provide that the Department may deny issuance of a real estate license to anyone convicted of any felony or a crime of moral turpitude, if the crime or act is substantially related to the qualifications, functions or duties of a licensee of the Department (See California Code of Regulations section 2910).

2. California Code of Regulations section 2912 provides criteria for evaluation of rehabilitation in disciplinary proceedings. An examination of these factors as applied to the criminal convictions alone, compels the conclusion that respondent is substantially, if not fully rehabilitated, such that cause for discipline pursuant to Business and Professions Code section 480(a), section 10177(b) and California Code of Regulations section 2910; does not exist by reason of Factual Findings 2 through 13.

3. Business and Professions Code section 10177(a) provides for disciplinary action against a licensee who obtained her license by means of fraud, misrepresentation or deceit, or by making a material misrepresentation of fact in her application. Pursuant to Factual Findings 2, 3, 7, 8, 11 and 13, cause for discipline of respondent's license for violation of this section has been established by clear and convincing evidence.

4. Cause for issuance of a restricted (conditional) license exists by reason of Factual Findings 3 through 13. Respondent's lack of candor in failing to disclose her criminal convictions is disturbing as it reflects adversely on her honesty and integrity, traits that are essential to the profession. However painful or consequential disclosure might be to respondent, the failure to disclose can be equally painful and carry even greater consequences. While understandable under the circumstances, it is not excusable and warrants a period of actual suspension to convey the seriousness of the matter.

#### ORDER

All licenses and licensing rights of respondent Kelli Lynn Collins under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license not 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.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement

NOT ADOPTED

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 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. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
- 6. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for thirty (30) days from the date of issuance of said restricted license.
- 7. Respondent shall, within six (6) months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.
- 8. Respondent's original real estate salesperson license was issued subject to the provisions of Section 10153.4 of the Business and Professions Code, and the restricted real estate salesperson license issued to respondent shall be similarly limited, to wit: respondent shall, within eighteen (18) months of the issuance of respondent's original real estate salesperson license under the provisions of Section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in 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 fails to present satisfactory evidence of successful completion of said courses, the restricted license shall be automatically suspended effective eighteen (18) months after

NOT ADOPTED

NOT ADOPTED

issuance of respondent's original real estate salesperson license. Said suspension shall not be lifted until respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the respondent of lifting of the suspension.

Dated: 1/12/01

William O. Hoover  
WILLIAM O. HOOVER  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
OCT 17 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of  
  
KELLI LYNN COLLINS,

}

Case No. H-3533 SAC  
OAH No. N-2000100225

By Muriel G. Zin

Respondent

NOTICE OF HEARING ON ACCUSATION

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, 560 J Street, Suite 340/360,  
Sacramento, CA 95814

on Monday, December 18, 2000, at the hour of 9:00 AM,  
or as soon thereafter as the matter can be heard, upon the Accusation 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.

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 subpoenas 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.

Dated: October 17, 2000

DEPARTMENT OF REAL ESTATE  
By James L. Beaver  
JAMES L. BEAVER Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0788 (Direct)

FILED  
SEP 20 2000

DEPARTMENT OF REAL ESTATE

*Laurie A. Z...*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 KELLI LYNN COLLINS, )  
13 Respondent. )

No. H-3533 SAC  
ACCUSATION

14  
15 The Complainant, Charles W. Koenig, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 Accusation against KELLI LYNN COLLINS (hereinafter "Respondent"),  
18 is informed and alleges as follows:

19 I

20 Respondent is presently licensed and/or has license  
21 rights under the Real Estate Law, Part 1 of Division 4 of the  
22 Business and Professions Code (hereinafter "Code") as a real  
23 estate salesperson.

24 II

25 The Complainant, Charles W. Koenig, a Deputy Real  
26 Estate Commissioner of the State of California, makes this  
27 Accusation against Respondent in his official capacity.



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III

On or about December 12, 1991, in the Superior Court of the State of California, County of Sacramento, Respondent was convicted of three separate and distinct counts of the crime of Possession For Sale of Methamphetamine in violation of Health and Safety Code Section 11378, each a felony and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

IV

On or about November 8, 1999, 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 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 California Business and Professions Code.

V

In response to Questions 25 and 27 of said application, requiring Respondent to reveal the court of conviction, arresting agency, date of conviction, type of conviction, code name and section number violated, disposition and case number, for each conviction of any violation of law, Respondent concealed and failed to reveal the convictions described in Paragraph III, above.

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VI

On or about December 2, 1999, in reliance upon Respondent's representations in said application. the Department issued a real estate salesperson license to Respondent subject to the provisions of Section 10153.4 of the Code.

VII

Respondent's failure to reveal the convictions set forth in Paragraph III, above, in said application constitutes the procurement of a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, and is cause under Section 10177(a) of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.

  
CHARLES W. KOENIG  
Deputy Real Estate Commissioner

Dated at Sacramento, California,  
this 15<sup>th</sup> day of September, 2000.