

FILED

FEB 18 2006

DEPARTMENT OF REAL ESTATE

By *James Arant*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of) No. H-3636 SAC
VICTORIA MARIE AGUILERA,)
Respondent.)

ORDER GRANTING UNRESTRICTED LICENSE

On April 24, 2002, 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 June 12, 2002, and Respondent has operated as a restricted licensee since that time.

On March 15, 2005, Respondent petitioned for the removal of restrictions attaching to her real estate salesperson license.

I have considered Respondent's Petition and the evidence submitted in support thereof including Respondent's

1 record as a restricted licensee. Respondent has demonstrated to
2 my satisfaction that Respondent meets the requirements of law for
3 the issuance to her of an unrestricted real estate salesperson
4 license and that it would not be against the public interest to
5 issue said license to Respondent.

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

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

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

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

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

22 3. Upon renewal of the license issued pursuant to this
23 order, respondent shall submit evidence of having taken and
24 successfully completed the continuing education requirements of
25 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
26 real estate license.

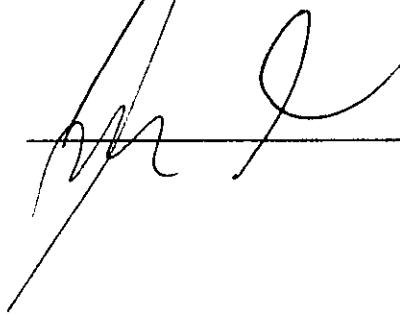
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This Order shall become effective immediately.

DATED: 2-7, 2006.

JEFF DAVIS
Real Estate Commissioner

A handwritten signature in dark ink, appearing to read 'JEFF DAVIS', is written over a horizontal line. The signature is stylized and cursive.

FILED
MAY - 6 2002

By Kathleen Centreas

NO. H-3636 SAC
N-2002010618

The Proposed Decision dated April 11, 2002, 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 May 28, 2002.

IT IS SO ORDERED *April 24*, 2002.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

Real Estate Commissioner

Paula Redmond

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

VICTORIA MARIE AGUILERA,

Respondent.

No. H-3636 SAC

OAH No. N2002010618

PROPOSED DECISION

Jaime René Román, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on March 18, 2002.

Larry A. Alamao, Staff Counsel, Department of Real Estate, represented Complainant.

Respondent Victoria Marie Aguilera appeared and was represented by Stephen S. Brand, Attorney at Law, 601 University Avenue, Suite 255, Sacramento, California 95825.

Evidence was received, the hearing was closed, and the matter was submitted on March 18, 2002.

FACTUAL FINDINGS

1. Statement of Issues number H-3636 SAC dated January 2, 2002 was filed on January 16, 2002 by complainant, Charles W. Koenig, Deputy Real Estate Commissioner of the State of California (hereinafter referred to as "complainant") against Victoria Marie Aguilera (hereinafter "respondent").

2. On January 22, 2002, respondent filed a timely Notice of Defense. On January 29, 2002, complainant submitted a request to set the matter for hearing.

3. On February 6, 2002, complainant served a notice of hearing, which was provided to respondent, for the March 18, 2002 hearing. Thereafter, the proceeding herein was held.

4. On June 18, 2001, respondent submitted an application to the Department of Real Estate ("the Department") 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 Business and Professions Code section 10153.4.

5. On or about April 25, 1990, in the Municipal Court of the State of California, County of San Joaquin, respondent was convicted of a violation of Section 484 of the California Penal Code, theft. Respondent pled guilty to the charge. As a consequence of the conviction, respondent was sentenced to one (1) day in county jail, and placed on probation for thirty-six (36) months. The court also ordered respondent to pay a fine and restitution.

6. The facts and circumstances of respondent's criminal conviction are that in 1990, respondent was in a difficult period in her life. Her situation at the time was unsettled as she was going through a divorce. On the incident date, respondent was shopping at a Long's Drugs in Lodi, California, where she picked up a face powder compact and some other items. At the register, she paid for the other items but did not have enough money to pay for the compact and thereafter departed the store without paying for the compact. This particular item was priced at around \$6.00. Following her departure, she was apprehended and taken into police custody, booked at the station, and spent 2 hours in jail.

7. The crime respondent committed as set forth in Finding 5 is a misdemeanor involving moral turpitude and bears a substantial relationship to the duties, functions and qualifications of a real estate license under California Code of Regulations, Title 10, Section 2910(a)(1), the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person; and section 2910(a)(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.

8. On respondent's application for a real estate salesperson license, the following language appears on the printed form after Question 23, in a box with bold edges for emphasis:

- ❖ Carefully read and provide detailed answers to questions #24-26.
You must provide a yes or no response to all questions.
- ❖ "Convicted" as used in Question 25 includes a verdict of guilty by judge or jury, a plea of guilty or of nolo contendere, or a forfeiture of bail in municipal, superior or federal court. All convictions must be disclosed whether or not the plea or verdict was set aside, the conviction against you was dismissed, or expunged or if you have been pardoned. Convictions occurring while you were a minor must be disclosed unless the record of conviction has been sealed under Section 1203.45 of the California Penal Code or Section 781 of the California Welfare and Institutions Code.

9. Question 25 on the application states as follows:

"25. HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? (YOU MAY OMIT CONVICTIONS FOR DRUNK DRIVING, RECKLESS DRIVING, AND MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE). IF YES, COMPLETE #27 BELOW."

10. Question 27 on the application states as follows:

"27. DETAILED EXPLANATION OF ITEMS 24-26. COMPLETE ONE LINE FOR EACH VIOLATION AND PROVIDE EXPLANATION BELOW. IF YOU ARE UNABLE TO PROVIDE THIS INFORMATION, A DETAILED EXPLANATION MAY SUFFICE. INDICATE WHETHER EACH CONVICTION WAS A MISDEMEANOR OR FELONY AT THE TIME THE CONVICTION OCCURRED. IF THE CONVICTION STATUS HAS BEEN SUBSEQUENTLY CHANGED OR REDUCED, NOTE THAT FACT IN THE AREA PROVIDED FOR ADDITIONAL INFORMATION. * CODE SECTION VIOLATED (i.e., 484) **CODE VIOLATED (i.e., PENAL CODE) *** DISPOSITION (i.e., PROBATION, PAROLE, FINE, LENGTH OF TERM, ETC.)"

Included as part of Question 27 is a chart with columns to provide information concerning court of conviction, arresting agency, date of conviction, type of conviction (felony or misdemeanor), code section violated, code violated, disposition, and case number. The license application includes an example of how to complete the chart, using a hypothetical misdemeanor conviction. There are blank lines below the chart for additional information.

11. In response to Question 25 of the license application, to wit: "Have you ever been convicted of any violation of law?" Respondent answered "No." Respondent signed the license application on June 12, 2001, thereby certifying under penalty of perjury under the laws of the State of California that the answers and statements on the license application were true and correct.

12. Respondent's failure to reveal the conviction set forth in Finding 5 in her license application constituted the procurement of a real estate license by misrepresentation, and by making a material misstatement of fact in said application.

13. At hearing, respondent claimed that at the time she filled out the application she believed the question did not apply to her because when she went to court on the conviction, she remembered the judge saying to her that if she stayed out of trouble and paid the fine, her "record would be sealed." She also credibly testified that the conviction was never an issue when she obtained a License for a Registered Tax Preparer through the California Tax Education Council and a License as a Broker through the Department of

Corporations, State of California, in which she responded similarly to similar questions. Finally, respondent testified she did not read the statement to Question No. 27 carefully because by marking "No" on Question No. 25, it was not required of respondent to proceed to Question No. 27.

14. In any event, respondent had an obligation to insure the accuracy of the license application, which she signed under penalty of perjury. The application specifically states that all convictions must be disclosed, and includes a detailed explanation of the word "convicted." The instructions accompanying Question 27 make it clear that misdemeanor convictions must be disclosed whether or not the plea or verdict was set aside, the conviction against the individual was dismissed, or expunged or if the individual had been pardoned. Respondent's answer to question 25 was false and misleading, and her failure to carefully read the application and determine whether or not her prior criminal conviction needed to be disclosed was, at a minimum, negligent.

15. The sole basis for the Department's action herein is respondent's failure to disclose the conviction on her application for licensure (see Statement of Issues, No. H-3636 SAC, dated January 16, 2002). Nevertheless, respondent introduced evidence at hearing to show that she is rehabilitated from her 1990 conviction. Respondent was 30 years old at the time the conduct took place that led to her conviction. Albeit the conviction has not been expunged. More than ten years have elapsed since that sole conviction. Since 1990, respondent has not engaged in any further criminal conduct. She has been married to her second husband since 1992, and is the mother of two children. Respondent has also pursued additional education for economic advancement. She attended Humphrey's College and obtained her Accounting Certificate in 1992, and Delta College in 1992 where she obtained her Administration of Justice Certificate. Respondent also obtained her Tax Course Certificate from H&R Block in 1995.

16. Respondent currently resides in Sacramento, California, and has been a resident of the Sacramento area since 1995. She presently has her own company called A&O Enterprises. Respondent is currently employed as a tax preparer during the tax season and recently set up accounting systems for small companies and individuals during the off-tax season. She began A&O Enterprises on a part-time basis in December 1997 and since September 2000 has made the company her full-time employment. Prior to that, Respondent worked as a bookkeeper for the Veterans of Foreign Wars from May 1997 to August 2000. Before her employment with the Veterans of Foreign Wars, respondent worked for Jackson Hewitt Tax Service as a tax preparer. She was employed as a tax preparer on a seasonal basis from January 1995 to April 1997. Respondent was also employed with Kelly Services Temporary Agency as a bookkeeper from March 1995 to January 1997.

17. Respondent introduced into evidence at hearing several recommendation letters attesting to her competence, honesty and integrity in her various employments. At hearing, Rick L. Lee, President of Vantage Point Mortgage, Inc. testified on respondent's behalf. According to Mr. Lee, respondent has been an efficient and honest individual and he plans to hire her as a real estate agent when she acquires her license.

18. At hearing, the evidence indicates respondent has not fulfilled the educational requirements pursuant to Business and Professions Code section 10153.4(a).

19. In order to determine whether it is appropriate to deny respondent a real estate salesperson's license or to issue her a restricted license, it is necessary to weigh and balance factors in aggravation, mitigation, justification and rehabilitation. The evidence introduced at hearing to justify the crime was that respondent was at a difficult time in her life when she was going through a divorce.

20. In aggravation, respondent was 30 years old at the time she committed the offense. Additionally, when respondent submitted her application for a real estate salesperson license, she plausibly believed the question at issue did not apply to her because she thought the judge "sealed the records."

21. In mitigation, the criminal conviction took place more than ten years ago. Furthermore, respondent informed this tribunal that at the time she sought for licenses as a Registered Tax Preparer and a Broker with two state agencies (the California Tax Education Council and the Department of Corporations, State of California), her conviction was never an issue.

22. Respondent provided evidence of rehabilitation in this matter. She has pursued her education, and has used her talents to serve the community. She has found employment in a position of trust and responsibility.

LEGAL CONCLUSIONS

1. Cause exists to deny the application of respondent for a real estate salesperson's license pursuant to Business and Professions Code sections 480(a) and 10177(b) by reason of Factual Findings 5 through 11, inclusive.

2. Respondent's conviction for theft is a crime involving "moral turpitude" within the meaning of Business and Professions Code section 10177(b). Indeed, her conviction bears a substantial relationship to the qualifications, functions, and duties of a real estate licensee. The real estate salesperson is responsible for respecting and safekeeping the monetary accounts of others. She is responsible for confirming that documents are completed truthfully and accurately. Theft is an act directly contrary to the duties of the salesperson. Crimes that reveal an applicant's dishonesty involve moral turpitude.¹ Lack of honesty or integrity, such as intentional dishonesty, demonstrates a lack of moral character and satisfies a finding of unfitness to practice a profession.² Theft clearly involves

¹ Clerici v. Department of Motor Vehicles (Fifth Dist. 1990) 224 Cal.App.3d 1016, 1027.

² Matanky v. Board of Medical Examiners (1978) 79 Cal.App.3d 293, 305.

dishonesty and demonstrates lack of moral character. Honesty and trustworthiness are qualities of utmost importance in a real estate licensee, who must frequently act in a fiduciary capacity. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee."³ "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson."⁴ "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear."⁵

While respondent's failure to disclose her criminal conviction on the application for licensure would ordinarily, at first glance, be an act of dishonesty. Her explanation that the question at issue did not apply to her because when she went to court on the conviction, she remembered the judge saying to her that if she stayed out of trouble and paid the fine, her "record would be sealed" has been found credible. Admittedly, her explanation is alarming in that real estate licensees must read and interpret complex contracts and documents and fill out paperwork and forms accurately and completely; nevertheless, it belies any intent to deceive the Department of Real Estate. Notably, respondent has learned, from these proceedings, the import of a real estate licensee, acting in a fiduciary capacity, to complete disclosure forms fully, truthfully and competently.

In order to determine whether respondent is presently fit for licensure, the evidence in mitigation and rehabilitation was weighed and balanced against the factors in aggravation.⁶ These factors, as set forth in Factual Findings 19 through 22, inclusive indicate that it would not be against the public interest to grant respondent a restricted license.

ORDER

The application of respondent VICTORIA MARIE AGUILERA for a real estate salesperson license is DENIED; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the 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 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:

³ Harrington v. Department of Real Estate (1989) 214 C.A.3d 394, 402.

⁴ Id.

⁵ Id.

⁶ Arneson v. Fox (1980) 28 Cal. 3d 440, 449; ("The licensee, of course, should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation.")

(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 (2) years has 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:

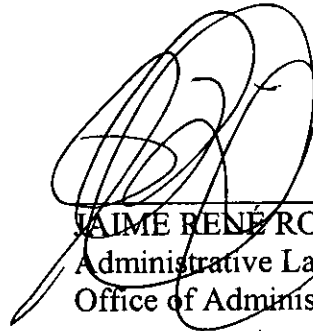
(a) That the employing broker has read the Decision which is the basis for
the issuance of the restricted license; and

(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's restricted real estate salesperson license is issued subject to the
requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent
shall, within eighteen (18) months of the issuance of the restricted license, 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, advance real estate finance or advanced real estate appraisal. If
respondent fails to timely present to the Department satisfactory evidence of successful
completion of the two required courses, the restricted license shall be automatically
suspended 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 of lifting of the suspension.

5. Pursuant to Section 10154, if respondent has not satisfied the requirements for an unqualified license under Section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four (4) years after the date of the issuance of the preceding restricted license.

Dated: 4-11-02



JAIME RENÉ ROMÁN
Administrative Law Judge
Office of Administrative Hearings

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Application of

VICTORIA MARIE AGUILERA,

Case No. H-3636 SAC

OAH No. N-2002010618

Respondent

NOTICE OF HEARING ON APPLICATION

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,

Suites 340/360, Sacramento, California 95814

on March 18, 2002, at the hour of 1:30 PM,
or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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 for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: February 6, 2002

By Larry A. Alamao
LARRY A. ALAMAO Counsel

1 LARRY A. ALAMAO, Counsel
2 State Bar No. 47379
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-0789

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JAN 16 2002

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12) NO. H-3636 SAC
13 VICTORIA MARIE AGUILERA,)
14) STATEMENT OF ISSUES
Respondent.)

15 The Complainant, Charles W. Koenig, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against VICTORIA MARIE AGUILERA (hereinafter "Respondent")
18 is informed and alleges as follows:

19 I

20 Complainant, Charles W. Koenig, a Deputy Real Estate
21 Commissioner of the State of California, makes this Statement of
22 Issues in his official capacity and not otherwise.

23 II

24 Respondent made application to the Department of Real
25 Estate of the State of California for a real estate salesperson
26 license on or about June 18, 2001, with the knowledge and
27 understanding that any license issued as a result of said

1 application would be subject to the conditions of Section 10153.4
2 of the Business and Professions Code.

3 III

4 In response to Question 25 of said application, to wit:
5 "Have you ever been convicted of any violation of law?",
6 Respondent answered "No".

7 IV

8 On or about April 25, 1990, in the Municipal Court,
9 County of San Joaquin, Respondent was convicted of a violation of
10 Section 484 of the California Penal Code (Theft), a crime
11 involving moral turpitude which bears a substantial relationship
12 under Section 2910, Title 10, California Code of Regulations, to
13 the qualifications, functions, or duties of a real estate
14 licensee.

15 V

16 The crime of which Respondent was convicted, as alleged
17 in Paragraph IV, constitutes cause for denial of Respondent's
18 application for a real estate license under Sections 480(a) and
19 10177(b) of the California Business and Professions Code.

20 VI

21 Respondent's failure to reveal the conviction set forth
22 in Paragraph IV above in said application constitutes the
23 procurement of a real estate license by fraud, misrepresentation,
24 or deceit, or by making a material misstatement of fact in said
25 application, which failure is cause for denial of Respondent's
26 application for a real estate license under Sections 480(c) and
27 10177(a) of the California Business and Professions Code.

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.

Charles W. Koenig
CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 2nd day of January, 2002.