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MAR 17 2011

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of

RACHEL MARIE HARTMAN,

Respondent.

No. H-3649 SD

ORDER GRANTING UNRESTRICTED LICENSE

On June 20, 2007, a Decision was rendered herein denying Respondent's application for a 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 September 17, 2007, and Respondent has operated as a restricted licensee since that time.

On August 13, 2009, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of

///

1 an unrestricted real estate salesperson license and that it would not be against the public interest
2 to issue said license to Respondent.

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

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

9 2. Within twelve (12) months from the date of this order Respondent shall:

10 (a) Submit a completed application and payment of the appropriate fee for a
11 real estate salesperson license, and

12 (b) Submit evidence of having taken and successfully completed the courses
13 specified in subdivisions (a) (1), (2), (3), (4) and (5) of Section 10170.5 of the Real Estate Law
14 for renewal of a real estate license. The continuing education courses must be completed either
15 (i) within the 12 month period preceding the filing of the completed application, or (ii) within the
16 12 month period following the date of this Order.

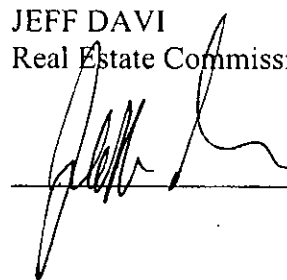
17 3. Upon renewal of the license issued pursuant to this order, Respondent
18 shall submit evidence of having taken and successfully completed the continuing education
19 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate
20 license.

21 This Order shall become effective immediately.

22 IT IS SO ORDERED

2/8/2011

23 JEFF DAVI
24 Real Estate Commissioner

25 
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
JUN 21 2007

DEPARTMENT OF REAL ESTATE

By Anne Pham

In the Matter of the Application of)
RACHEL MARIE HARTMAN,) NO. H-3649 SD
Respondent.) OAH NO. N-2007010647

DECISION

The Proposed Decision dated May 15, 2007, 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 JUL 11 2007.

IT IS SO ORDERED 6-20-07

JEFF DAVI
Real Estate Commissioner

Jeff Davi

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of:

RACHEL MARIE HARTMAN,

Respondent.

Case No. H-3649 SD

OAH No. L2007010647

PROPOSED DECISION

On February 22, 2007, in San Diego, California, Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Truly Sughrue, Counsel, represented the complainant.

Respondent Rachel Marie Hartman was present and represented herself.

The matter was submitted on February 22, 2007.

FACTUAL FINDINGS

1. The Statement of Issues was made and filed by Joseph Aiu in his official capacity as a Deputy Real Estate Commissioner of the State of California, and not otherwise.
2. At all times relevant to the determination of the issues in this case, respondent was unlicensed by the Department in any capacity.
3. The allegations in this case are very simple and straightforward. Respondent has applied for licensure with the Department as a real estate salesperson. The Department has denied this application on multiple grounds. The first is that respondent was, it is alleged, untruthful when answering questions on her application. The second is that she has sustained criminal convictions that are substantially related to the duties, qualifications and functions of a licensee. The third is that she has failed to establish sufficient evidence of rehabilitation to justify the granting of licensure. Respondent claims that she was not untruthful in the application process and that she has established a sufficient showing of rehabilitation from the substance abuse problems that have plagued her in the past.

4. Respondent signed an application for licensure with the Department on May 23, 2006. By signing the application, she certified under penalty of perjury that the information contained therein was true and correct. Questions 24 through 27 require information about criminal convictions and license discipline.

The application contains the following language explaining the meaning of the term "conviction." It states:

"'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."

Question 25 reads as follows:

"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.)"

In response to question 25, respondent answered "Yes." This answer was correct since she had sustained multiple criminal convictions. Item 27 asked for a detailed explanation of an affirmative answer to question 25. Respondent provided information about two criminal convictions that she had sustained. The first was for a conviction for disturbing the peace sustained in 1991. The second was for a conviction in federal court for transportation of illegal aliens and aiding and abetting, both felonies.

Respondent's answer was incomplete and inaccurate. Respondent sustained one additional conviction that she did not disclose. This conviction was sustained in 2001 and was for the violation of Penal Code section 242, battery, a misdemeanor.

5. Respondent sustained the following criminal convictions which are relevant to the determination of issues in this case:

a. On or about October 21, 1991, in the Superior Court, County of San Diego, respondent was convicted of a violation of Penal Code section 415, Disturbing the Peace, a misdemeanor. This conviction does not, at least on its face, involve moral turpitude and this conviction does not bear a substantial relationship to the qualifications, functions or duties of a real estate salesperson.

b. On or about December 4, 2001, in the Superior Court, County of San Diego, respondent was convicted of a violation of Penal Code section 242, battery, a misdemeanor. This conviction does not, at least on its face, involve moral turpitude

and this conviction does not bear a substantial relationship to the qualifications, functions and duties of a real estate salesperson.

c. On or about March 3, 2003, in the United States District Court, Southern District of California, respondent was convicted of a violation of Title 8 United States Code section 1324(a)(1)(A)(ii) and (v)(II) transportation of Illegal Aliens. This is a felony and a crime that, based upon its circumstances, constituted moral turpitude and bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

6. Respondent was contacted by the Department of Real Estate to discuss the failure to disclose all her criminal convictions. Respondent supplied a Conviction Detail Report (RE 515D) to the Deputy Real Estate Commissioner for each conviction. Her explanation on the RE 515D forms was somewhat confusing. Her testimony at the hearing was somewhat confusing regarding the convictions. However, it does not appear that she intended to be false or mislead the Department about her past. In both her testimony and her written explanation, respondent believed that the battery conviction of December 2001 and the alien smuggling conviction were somehow merged into one. At first blush, this may sound silly. But, based upon the totality of the record, including respondent's demeanor during the hearing, it is far more likely than not that she had a good faith, albeit unreasonable belief that she was supplying all necessary information regarding her criminal past in her application. Respondent did acknowledge that she had sustained three convictions.

7. Dishonesty is antithetical to the holding of a position of trust. A real estate salesperson holds such a position of trust. The public must be able to have confidence and assurance that those who operate in the process of buying, selling and transferring real estate are persons of honesty and integrity. For that reason, above all others, intentional dishonesty in the application process is to be viewed most seriously. Indeed, oftentimes the dishonesty is far more serious than the underlying crime. Oftentimes, the dishonesty is the disqualifying event, not the conviction.

8. The Office of Administrative Hearings conducts hearings such as these involving sensitive licensing issues where public welfare is at stake for over 100 state and local government agencies. In almost every case, there are disputes over the honesty and veracity of witnesses. There are claims that one witness or another is lying. Those who lie should not be rewarded for their serious misdeed since they do so under penalty of perjury. By the same token, honest mistakes of memory, inadvertent lapses of recollection and well intentioned misstatements should not wear the brand of the liar. Not every person who misstates something, either in a document or while testifying, is guilty of deceit. Each such charge must be evaluated individually and against a background of a body of expertise developed hearing similar types of cases. Government Code section 11425.50(c) contemplates this when it states:

"The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the

proceeding. The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence."

It is regrettable but lying is all too common in our courts. After 17 years of hearing these cases, that is the unfortunate conclusion that the Administrative Law Judge, as trier of fact, makes. People lie, they fib, they distort, they mislead, and they twist facts and exaggerate. Not all witnesses, but some do. The respondent in this case was neither defensive in her testimony nor did she attempt to blame anyone else for her past or her present, for that matter. She testified with humility, honesty and integrity. She is a devout Christian, but unlike some that publicly proclaim this while being incredible hypocrites, she was humble and sincere.

9. It was established clearly that respondent had no intention of misleading anyone about her convictions. She had a good faith, albeit erroneous belief that the 1991 and 2001 convictions had somehow been merged into one. Her convictions, rather than being a badge of shame, are the starting point of her personal story of redemption. They are central to her journey of recovery through her faith and her sobriety. She was not, at any time in the application process, deceitful. She did, however, make a material misstatement of fact in the application and this is cause for some concern and caution since real estate agents must be meticulous and exact in their preparation of documents and their representations to purchasers, sellers, banks and lenders. They need to be able read carefully and understand completely the things they sign, particularly the things they sign under penalty of perjury. If they are unsure of what they are to enter on a particular document, the DRE and the people of the State of California are entitled to expect that they will ask someone who might know, before they enter false and misleading information of the document.

10. Respondent is a work in progress but the start of her journey is a most compelling success story. For many years in the 1980s and the 1990s, she struggled against the power of alcohol and drugs or both. Despite the fact that her criminal convictions were for disparate offenses, lurking in the background was alcohol and drugs. She spent many years living in a fog of drugs and alcohol.

11. Respondent's life began to change in 2003 when she was incarcerated in federal prison as a result of her most recent conviction. She finally began to come to the realization that her life was out of control and she was slowly spinning toward oblivion. She began her slow and painful journey of sobriety while in prison. She stopped drinking and using, began for the first time to attend AA and NA with zeal and commitment and she also discovered a new relationship with God.

12. Respondent is 35 years old and lives in Carlsbad, California. She is employed full time for "ipayone" a mortgage company. She has been employed with this same employer for approximately 18 months. She does outward bound calling to prospective borrowers. She has a family support system in the area. Her mother and her aunt both reside in San Diego and she sees them regularly. She is actively involved with her church where she helps teach Sunday School.

13. Respondent sincerely testified that her family and her spiritual life mean everything to her. Also central to her recovery is CRASH, the residential recovery program she was sent to following her release from prison. These three factors saved her from booze and drugs. She recognizes that her mistakes have cost her dearly and she is devoted to making amends and accepting responsibility for the fallout from her prior misdeeds. She has had tremendous challenges overcoming her past. She did not graduate from high school because she left school in or about 1981 in the second semester of the tenth grade. In 2005, she finished high school by passing the necessary equivalency test. Today, as she testified compellingly, she is working regularly, shows up on time, pays her bills and matches her actions with her words.

14. Respondent has demonstrated by her attitude and her actions that she has made significant and substantial change in her life since her date of sobriety on June 30, 2003 and her efforts at rehabilitation from the moral, spiritual and legal difficulties that beset her in the past are to be acknowledged and commended. She currently possesses the type of qualities that one would wish a real estate salesperson to have. However, her sobriety, when judged against the seriousness of her past difficulties, is still in its infancy. For that reason, as one of the conditions of issuance of a probationary license, respondent should be required to continue regular attendance at AA and/or NA.

15. Respondent is no longer on criminal parole for any of her past misdeeds. She is on a most positive trajectory toward great accomplishments all due to her sobriety, her newfound maturity, her spiritual awakening and to the understanding and support of her family. Both her mother and aunt testified and sincerely acknowledged the long and winding road that she has taken to the present.

16. Respondent has gone from a person full of anger and irresponsibility to a new path. Most importantly, she remembers where she has come from. For that reason, she regularly volunteers at the CRASH residential facility where she first discovered her sobriety and hope. She averages 30 hours per week often spending the entire weekend at CRASH. She attends regular AA and NA meetings in the Carlsbad/Oceanside area, has a sponsor and sponsors other women. She is working the 12 Step program for the third time. In her testimony she readily acknowledges that she is responsible for her criminal misbehavior. It appears clear that all three convictions have alcohol as a substantial factor. Following her release from prison, she began two years of supervised release which she successfully completed on June 24, 2005.

17. If she is fortunate enough to receive her license, she intends to stay at ipayone. Her employer is aware of her criminal past. Respondent's mother testified. She has seen tremendous growth in her daughter in the past four years. Through her church and her program of recovery, she has become productive and responsible and is giving back to others who are in need, as she was. Respondent now has a mature plan and is in control of her emotions and her life.

LEGAL CONCLUSIONS

1. Cause was established to deny respondent's application for licensure as a real estate salesperson. The record in this case, viewed in its totality, strongly and convincingly supports a finding that any misstatement she may have made during the application process was inadvertent. There is no credible evidence that suggests that she was dishonest, deceitful or motivated to conceal her past. Complainant failed to establish that respondent's actions constituted the procurement of, or the attempt to procure, a real estate license by fraud, misrepresentation, or deceit. However, it was established that respondent made a material misstatement of fact in the application under Business and Professions Code sections 10177, subdivision (a) and 480, subdivision (c) by virtue of Factual Findings 1-17.

2. Cause was established to deny respondent's application for licensure as a real estate salesperson on the grounds that he was convicted of a crimes that involve moral turpitude and is substantially related to the qualifications, functions, or duties of a real estate licensee. This crime, smuggling illegal aliens, constitutes moral turpitude and it bears a substantial relationship to the duties, functions and qualifications of a Department licensee under sections 480, subdivision (a) and 10177, subdivision (b) of the California Business and Professions Code by virtue of Factual Findings 1-17.

3. Cause was established to deny respondent's application for licensure as a real estate salesperson on the grounds that she has failed to establish complete rehabilitation under Title 10, California Code of Regulations, section 2910, by virtue of Factual Findings 1-17. However, based upon the totality of the record, the public interest would not be adversely affected by the issuance of a restricted license. Respondent is modest and humble about her accomplishments in turning her life around. Considering where she started from, these accomplishments are exceptional.

4. Central to the Legal Conclusions in this case is a specific finding regarding the credibility of the respondent and her efforts at sobriety. She is found to be completely credible and forthright. The Administrative Law Judge was guided by the factors listed in California Evidence Code section 780 which sets out what the trier of fact should consider in determining the credibility of a witness.

The trier of fact should consider:

"... any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

- (a) His manner while testifying and the manner in which he testifies.
- (b) The character of his testimony.
- (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies.
- (d) The extent of his opportunity to perceive any matter about which he testifies.
- (e) His character for honesty or veracity or their opposites.
- (f) The existence or non existence of a bias, interest, or other motive.

- (g) A statement previously made by him that is consistent with his testimony at the hearing.
- (h) A statement previously made by him that is inconsistent with any part of his testimony at the hearing.
- (i) The existence or nonexistence of any fact testified to by him.
- (j) His attitude toward the action in which he testifies or toward the giving of testimony.
- (k) His admission of untruthfulness."

5. The mandate of Evidence Code section 780 has been applied to the testimony of all witnesses. The trier of fact is also guided by BAJI 8th, the formal instructions given to juries as triers of fact in California.

BAJI 2.21 reads as follows:

"Discrepancies in a witness' testimony or between such witness' testimony and that of other witnesses, if there were any, do not necessarily mean that [any] [such] witness should be discredited. Failure of recollection is common. Innocent misrecollection is not uncommon. Two persons witnessing an incident or a transaction often will see or hear it differently. Whether a discrepancy pertains to an important matter or only to something trivial should be considered by you."

6. California Government Code section 11425.50(b) reads as follows:

"The statement of the factual basis for the decision may be in the language of, or by reference to, the pleadings. If the statement is no more than mere repetition or paraphrase of the relevant statute or regulation, the statement shall be accompanied by a concise and explicit statement of the underlying facts of record that support the decision. If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it." (Emphasis added.)

ORDER

The application for licensure of Rachel Marie Hartman for licensure as a real estate salesperson is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days of the effective date of this Decision. The restricted license shall be subject to all of the provisions of Business and Professions Code section 10156.7 and shall be subject to the following limitations, conditions and restrictions imposed under Business and Professions Code section 10156.6:

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 nor 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 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 eighteen (18) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he 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. Respondent shall, within six 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.

7. Respondent shall attend regularly (at least three per week) a twelve step
program such as Alcoholics Anonymous and/or Narcotics Anonymous, and on a
quarterly basis report such regular attendance to the Department under penalty of
perjury.

DATED: May 15, 2007



STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings

FILED
DEC 29 2006

DEPARTMENT OF REAL ESTATE

By Aune Marie

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of)
12 RACHEL MARIE HARTMAN,)
13 Respondent.)

No. H-3649 SD

STATEMENT OF ISSUES

15 The Complainant, JOSEPH AIU, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against RACHEL MARIE HARTMAN (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about June 26, 2006, with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section 10153.4
25 of the Business and Professions Code.

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1 II

2 Complainant, JOSEPH AIU, a Deputy Real Estate
3 Commissioner of the State of California, makes this Statement of
4 Issues in his official capacity and not otherwise.

5 III

6 In response to Question 25 of said application, to wit:
7 "Have you ever been convicted of any violation of law?",
8 Respondent answered "Yes" and disclosed the convictions set forth
9 in Paragraphs IV, and VI below.

10 IV

11 On or about October 21, 1991, in the Superior Court,
12 County of San Diego, Respondent was convicted of a violation of
13 Section 415 of the California Penal Code (Disturbing the Peace),
14 a crime involving moral turpitude which bears a substantial
15 relationship under Section 2910, Title 10, California Code of
16 Regulations, to the qualifications, functions, or duties of a
17 real estate licensee.

18 V

19 On or about December 4, 2001, in the Superior Court,
20 County of San Diego, Respondent was convicted of a violation of
21 Section 242 of the California Penal Code (Battery), a crime
22 involving moral turpitude which bears a substantial relationship
23 under Section 2910, Title 10, California Code of Regulations, to
24 the qualifications, functions, or duties of a real estate
25 licensee.

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VI

On or about March 3, 2003, in the United States District Court, Southern District of California, Respondent was convicted of a violation of Title 8 United States Code Section 1324(a)(1)(A)(ii) and (v)(II) (Transportation of Illegal Aliens), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

VII

The crimes of which Respondent was convicted, as alleged in Paragraphs IV, V, and VI, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

VIII

Respondent's failure to reveal the conviction set forth in Paragraph V 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, which failure is cause for denial of Respondent's application for a real estate license under Sections 480(c) and 10177(a) of the California Business and Professions Code.

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WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, and for such other and further relief as may be proper under other provisions of law.

JOSEPH AIU
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 22 day of December, 2006.