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FILED
MAY 23 2007

DEPARTMENT OF REAL ESTATE

By Juan Mendez

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of) No. H-3847 SAC
)
SHABALI NICOLE McCLAIN,)
)
Respondent.)
)

ORDER GRANTING UNRESTRICTED LICENSE

On December 5, 2003, 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 January 22, 2004, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On March 10, 2006, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

1 I have considered Respondent's Petition and the
2 evidence submitted in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate
6 salesperson license and that it would not be against the public
7 interest to issue said license to Respondent.

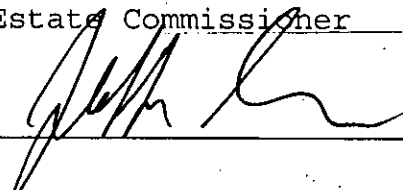
8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for removal of restrictions is granted and that a real
10 estate salesperson license be issued to Respondent if Respondent
11 satisfies the following conditions within nine (9) months from
12 the date of this order:

13 (a) Submittal of a completed application and payment
14 of the appropriate fee for a real estate salesperson license, and

15 (b) Submittal of evidence satisfactory to the Real
16 Estate Commissioner that Respondent has, since the most recent
17 issuance of an original or renewal real estate license, taken and
18 successfully completed the continuing education requirements of
19 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
20 real estate license.

21 This Order shall become effective immediately.

22 IT IS SO ORDERED 4-24, 2007.

23 JEFF DAVI
24 Real Estate Commissioner
25 
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
DEC - 9 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of)
SHABALI NICHOLE McCLAIN,)
Respondent.)

NO. H-3847 SAC
OAH NO. N-2003080601

DECISION

The Proposed Decision dated November 19, 2003, 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.

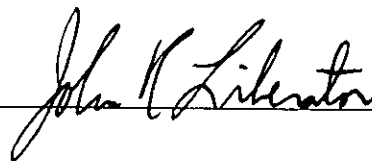
If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon
on DECEMBER 29, 2003.

IT IS SO ORDERED

December 5, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

SHABALI NICOLE MCCLAIN,

Respondent.

Case No. H-3847 SAC

OAH No. N-2003080601

PROPOSED DECISION

Administrative Law Judge Muriel Evens, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on October 14, 2003.

David A. Peters, Counsel, represented complainant Charles W. Koenig.

Respondent was present and represented himself.

The matter was submitted on October 14, 2003.

FACTUAL FINDINGS

1. Complainant Charles W. Koenig, a Deputy Real Estate Commissioner, made the statement of issues in his official capacity.

2. On or about September 18, 2002, respondent applied for licensure as a real estate salesperson.

3. On or about May 30, 1991, respondent was convicted in the County of Sacramento, of a violation of Penal Code section 484, petty theft, a misdemeanor and crime of moral turpitude substantially related to the qualifications, functions or duties of a real estate licensee. Respondent was sentenced to pay a fine and restitution. The facts and circumstances were that respondent stole some articles of clothing from a J.C. Penney store.

4. On or about October 2, 2000, respondent was convicted in the Sacramento Municipal and Superior Court, of violation of Penal Code section 594(a), vandalism, a misdemeanor and crime of moral turpitude substantially related to the qualifications, functions or duties of a real estate licensee. Respondent was given three years informal probation, restitution and 30 days in jail, with work project recommended. On or about July

2, 2002, the Superior Court of Sacramento County granted respondent's petition for relief under Penal Code section 1203.4, withdrawing respondent's plea and dismissing the matter.

The facts and circumstances of the offense were that respondent learned that her significant other of 10 years, the father of two children together, including an infant, was having a relationship with another woman. Respondent confronted him near his workplace, which resulted in respondent getting angrier. She chased him with a bat (in his truck for softball), but could not catch him. She then turned to his truck and broke most of the windows.

5. Respondent and her significant other are still together, with no major challenges to their relationship. Respondent is now employed by the State as an assistant information analyst. Since 2000, she has taken numerous computer classes at local community colleges and programs. She is a soccer and football mom to five children--one hers, two his, and two theirs. In 2001, she purchased a home. She attends church and has started a business with her mother selling handbags and accessories. Respondent seeks to work in real estate with her mother, who was recently licensed.

6. Respondent was 18 years old when she shoplifted in 1991. There was no evidence of any other problem with theft since then. The more recent offense, an act of violence, occurred in a very emotional context. Respondent seems to have settled down and matured since that event. She has taken numerous positive steps educationally and professionally.

LEGAL CONCLUSIONS

1. Grounds for denial of respondent's application for licensure was established pursuant to Business and Professions Code sections 480(c) and 10177(b) by reason of Findings 3 and 4.

2. Respondent has shown sufficient rehabilitation to justify the issuance of a restricted license

ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. 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 said Code:

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

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

(b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

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

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

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

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

DATED: November 19, 2003



MURIEL EVENS
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
SEP 10 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

SHABALI NICOLE McCLAIN,

Case No. H-3847 SAC

OAH No. N-2003080601

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, SUITE 340/360, SACRAMENTO, CA 95814** on **TUESDAY, OCTOBER 14, 2003**, at the hour of **9:00 A.M.**, 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 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 his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: SEPTEMBER 10, 2003

DEPARTMENT OF REAL ESTATE

By

David A. Peters
DAVID A. PETERS, Counsel

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)

FILED
JUL 11 2003

DEPARTMENT OF REAL ESTATE

By Laurie E. Zini

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 SHABALI NICOLE McCLAIN,)
13 Respondent.)

No. H- 3847 SAC

STATEMENT OF ISSUES

14
15 The Complainant, Charles W. Koenig, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against SHABALI NICOLE McCLAIN aka Shabali Said and Jenny
18 Kauffman (hereinafter "Respondent") 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 September 17, 2002.

23 II

24 Complainant, Charles W. Koenig, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity.

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III

On or about May 30, 1991, in the Sacramento Superior and Municipal Court, County of Sacramento, State of California, Respondent was convicted of a violation of Section 484 of the California Penal Code (Petty Theft), 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.

IV

On or about October 2, 2000, in the Sacramento Superior and Municipal Court, County of Sacramento, State of California, Respondent was convicted of a violation of Section 594(a) of the California Penal Code (Vandalism), a crime involving moral turpitude and/or a crime 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.

V

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

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1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the
3 charges contained herein, that the Commissioner refuse to
4 authorize the issuance of, and deny the issuance of a real
5 estate salesperson license to Respondent, and for such other and
6 further relief as may be proper in the premises.

7
8 
9 CHARLES W. KOENIG
Deputy Real Estate Commissioner

10 Dated at Sacramento, California,
11 this 26th day of June, 2003.