

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
SARA LEE OKAZAKI,)
Respondent.)

NO. H-4247 SAC

OAH No. N-2005040398

FILED
JUL 26 2005

DEPARTMENT OF REAL ESTATE

By S. Lee

DECISION

The Proposed Decision dated June 24, 2005, 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 AUG 15 2005.

IT IS SO ORDERED 7-14-05 2005.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

SARA LEE OKAZAKI,

Respondent.

Case No. H-4247 SAC

OAH No. N2005040398

PROPOSED DECISION

On June 3, 2005, in Sacramento, California, Jaime R. Román, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Michael B. Rich, Counsel, Department of Real Estate, represented the complainant.

Sara Lee Okazaki (respondent) appeared and represented herself.

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

FACTUAL FINDINGS

1. Charles W. Koenig (Koenig), Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California, filed the Statement of Issues against respondent. Koenig acted in his official capacity.

2. On August 13, 2004, respondent filed a Real Estate "Salesperson License Application" with the Department. The application is pending.

Respondent has not presented evidence to the Department regarding successful completion of the courses required by Business and Professions Code section 10153.4.

3. Respondent readily acknowledges having suffered multiple convictions of driving under the influence.

- A. In or about 1979, respondent, then age 22, acknowledges having suffered a conviction for violating Vehicle Code section 23103.5 (wet reckless).¹
- B. On October 7, 1993, in the Municipal Court of California, County of San Joaquin, Case No. LM007729A, respondent, then age 36, was convicted of a violation of Vehicle Code section 23152(b) (driving while having a blood alcohol level of .08 percent or more), a crime involving moral turpitude and substantially related to the qualifications, functions and duties of a Department licensee.² Respondent was placed on probation.
- C. On July 23, 1998, in the Municipal Court of California, County of San Joaquin, Case No. LM018388A, respondent, then age 41, was convicted of a violation of Vehicle Code section 23152(b) with a prior conviction, and a violation of Vehicle Code section 14601.1, subdivision (a) (driving with a suspended license) crimes involving moral turpitude and substantially related to the qualifications, functions and duties of a Department licensee. Respondent was placed on probation and ordered, inter alia, to obey all laws.
- D. On May 31, 2000, in the Superior Court of California, County of San Joaquin, Case No. 00CR0663, respondent, then age 43, was convicted of a violation of Vehicle Code section 23152(a) (driving while intoxicated), with two prior convictions, and a violation of Vehicle Code section 14601.2, subdivision (a) (driving with a suspended license) crimes involving moral turpitude and substantially related to the qualifications, functions and duties of a Department licensee. Respondent was placed on probation and ordered, inter alia, to obey all laws.
- E. On May 3, 2002, in the Superior Court of California, County of San Joaquin, Case No. LM025718A, respondent, then age 45, was convicted of a violation of Vehicle Code section 23152(b) with two prior convictions, and a violation of Vehicle Code section 14601.2, subdivision (a), crimes involving moral turpitude and substantially related to the qualifications, functions and duties of a Department licensee. Respondent was placed on probation for five years.

4. Respondent is now age 48. She readily acknowledges her prior convictions. Without seeking to excuse or mitigate her prior convictions, she admits she is an alcoholic.

¹ Respondent, on cross-examination, admitted suffering this conviction.

² See *People v. Eribarne* (2005) 124 Cal.App.4th 1463, 1467 (misdemeanor violation of Vehicle Code section 23152, subdivision (b) constitutes "a misdemeanor conviction involving...the threat of injury to another person.")

She claims that for years she denied either being an alcoholic or requiring any intervention. Her 2002 conviction with the Superior Court's intervention by an extended jail sentence "redeemed" her. Lacking access to alcohol, compelled to turn inward, focused on an alcohol rehabilitation program, respondent threw herself into Alcoholics Anonymous. She attends frequent meetings and references August 10, 2002, as her sobriety date.

Circumstances in Aggravation

5. Respondent has suffered multiple convictions involving moral turpitude.
6. Respondent is presently on court probation.
7. Respondent's most recent conviction occurred within the last five years.

Circumstances in Mitigation

8. Respondent has not ingested any alcoholic beverage for nearly three years.
9. Respondent has completed all terms and conditions of her recent grant of probation, except for the period remaining.
10. Respondent admits she is an alcoholic. Attending as much as six sessions a week, she avidly participates in Alcoholics Anonymous. She admits to a longstanding prior abuse of alcohol and readily acknowledges a prior uncharged conviction.
11. Respondent, presently engaged in selling furniture, is married, has two children, and seeks licensure to advance the professional opportunities. Notwithstanding respondent's prior abuse of alcohol, her husband has remained with her.
12. Respondent is articulate, insightful, circumspect, and clearly dedicated to a path of personal rehabilitation.
13. Respondent presented a witness, Danna Tenwolde, who has personally observed respondent's reformation from alcohol abuse. She attests that respondent's reformation is not situational—but sustained. Respondent provided numerous letters of reference confirming her recovery, reformation, and successful rehabilitation.
14. Respondent was fully candid and cooperative in this proceeding.

LEGAL CONCLUSIONS

1. Cause exists to deny the application of respondent for licensure as a real estate salesperson for a conviction of a crime involving moral turpitude substantially related to the qualifications, functions or duties of a real estate professional pursuant to Business and

Professions Code sections 480, subdivision (a), and 10177, subdivision (b), in conjunction with California Code of Regulations title 10, section 2910, and as set forth in Findings 2, 3.B, 3.C, 3.D, 3.E and 4.

It is clearly established that complainant has established cause to deny respondent's application.

What has emerged however is a middle-aged woman who has appeared and demonstrated a unique circumspection borne of judicial intervention. Her road to recovery took a number of years. But she has shown that such recovery is sustained.

A fundamental objective of the Department is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in the Department's licensure process.³ Respondent readily acknowledges that her history does not merit an unrestricted license. She seeks, by this action, a restricted license.

The law looks with favor on one who is reformed—not reforming. Respondent has clearly presented rehabilitation worthy of salutary consideration. That being said, the recency and frequency of her convictions within the past five years compels scrutiny by the Department. Accordingly, mindful of the conduct underlying the Accusation (Legal Conclusion 1) and the circumstances in aggravation (Findings 5 through 7) and mitigation (Findings 8 through 14);⁴ the public interest will not be adversely affected by the issuance of a properly conditioned real estate salesperson's license to respondent.

ORDER

Respondent Sara Lee Okazaki's application for a real estate salesperson license is denied; provided, however, upon payment of any applicable fees, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of 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 or admission or determination of a violation of court probation) of a crime

³ *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

⁴ See California Code of Regulations, title 10, section 2911.

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 five years have elapsed from the date of issuance of the restricted license.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by any 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 shall not ingest any alcoholic beverages. She shall submit, at her expense, to biological fluid testing at any time, with or without a warrant, at the request of the Real Estate Commissioner, or his/her designee. Failure to submit to such test is a violation of probation.

5. Respondent shall attend no less than two Alcoholics Anonymous meetings per week and maintain a log of such attendance. Respondent shall, at the request of the Real Estate Commissioner or his/her designee, provide a copy of such log. Failure to attend, participate, or provide proof of such attendance or participation is a violation of probation.

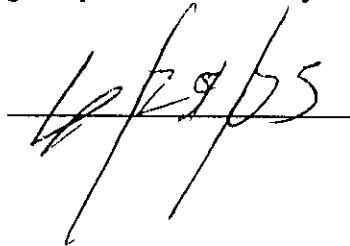
6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

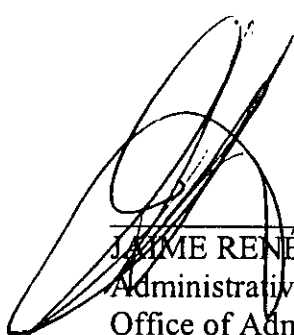
7. Respondent's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence

satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Business and Professions Code 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 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. Pursuant to Business and Professions Code 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 five years after the date of the issuance of the preceding restricted license.

8. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his/her Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in respondent's custody and control and periodic summaries of salient information concerning each real estate transaction in which he engaged during the period covered by the report.

Dated: _____





JAIME RENE ROMAN
Administrative Law Judge
Office of Administrative Hearings

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FILED
MAR 17 2005

DEPARTMENT OF REAL ESTATE

By A. Lee

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 SARA LEE OKAZAKI,)
13 Respondent.)

No. H-4247 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 SARA LEE OKAZAKI (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 August 13, 2004, 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, CHARLES W. KOENIG, 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 On or about October 7, 1993, in the Municipal Court,
7 County of San Joaquin, State of California, in case number
8 LM007729A, Respondent was convicted of a violation of Section
9 23152(b) of the California Vehicle Code (Driving under the
10 influence while having a blood alcohol level of .08% or more), a
11 crime involving moral turpitude and/or a crime which bears a
12 substantial relationship under Section 2910, Title 10, California
13 Code of Regulations, to the qualifications, functions, or duties
14 of a real estate licensee.

15 IV

16 On or about July 23, 1998, in the Municipal Court,
17 County of San Joaquin, State of California, in case number
18 LM018388A, Respondent was convicted of violating Section 23152(b)
19 of the California Vehicle Code (Driving under the influence while
20 having a blood alcohol level of .08% or more) and Section
21 14601.1(a) of the California Vehicle Code (Knowingly drive when
22 driving privilege suspended under Section 14601, 14601.2 or
23 14601.5), crimes involving moral turpitude and/or crimes which
24 bear a substantial relationship under Section 2910, Title 10,
25 California Code of Regulations, to the qualifications, functions,
26 or duties of a real estate licensee.

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1 V

2 On or about May 31, 2000, in the Superior Court, County
3 of Amador, State of California, in case number 00CR0663,
4 Respondent was convicted of violating Section 23152(a) of the
5 California Vehicle Code (Unlawfully driving a vehicle while under
6 the influence of alcohol) pursuant to Section 23540 of the
7 California Vehicle Code (Mandatory jail sentence for violating §
8 23152 with prior conviction for violating §§ 23103.5, 23152, or
9 23153 within seven years) and Section 23546 of the California
10 Vehicle Code (Mandatory jail sentence and license revocation for
11 two prior convictions for violating §§ 23103.5, 23152, or 23153
12 within seven years), and for violating Section 14601.2(a) of the
13 California Vehicle Code (Knowingly driving while license
14 suspended for driving under the influence), crimes involving
15 moral turpitude and/or crimes which bear a substantial
16 relationship under Section 2910, Title 10, California Code of
17 Regulations, to the qualifications, functions, or duties of a
18 real estate licensee.

19 VI

20 On or about May 3, 2002, in the Superior Court, County
21 of San Joaquin, State of California, in case number LM025718A,
22 Respondent was convicted of violating Section 23152(b) of the
23 California Vehicle Code (Driving under the influence while having
24 a blood alcohol level of .08% or more) and Section 14601.2(a) of
25 the California Vehicle Code (Knowingly driving while license
26 suspended for driving under the influence), crimes involving
27 moral turpitude and/or crimes which bear a substantial

1 relationship under Section 2910, Title 10, California Code of
2 Regulations, to the qualifications, functions, or duties of a
3 real estate licensee.

4 VII

5 The crimes of which Respondent was convicted, as
6 alleged in Paragraphs III, IV, V, and VI, above, individually
7 and/or collectively constitute cause for denial of Respondent's
8 application for a real estate license under Section 480(a) and/or
9 Section 10177(b) of the California Business and Professions Code.

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

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18 CHARLES W. KOENIG
19 Deputy Real Estate Commissioner

20 Dated at Sacramento, California,
21 this 15th day of March, 2005.
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