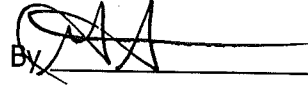


FILED

June 9, 2012

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

By 

In the Matter of the Application of)
TIFFANY MICHELLE HOWELL,)
Respondent.)
_____)

NO. H-4278 SD
OAH NO. 2012030244

DECISION

The Proposed Decision dated May 23, 2012, 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.

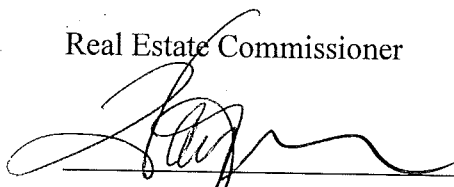
The application for a real estate license is denied, but the right to a restricted real estate license is granted to Respondent. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate 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 02 2012**

IT IS SO ORDERED 6/6/2012

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

TIFFANY MICHELLE HOWELL

Respondent.

Case No. H-4278 SD

OAH No. 2012030244

PROPOSED DECISION

On May 17, 2010, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

John Van Driel, Real Estate Counsel, represented complainant.

George R. Najjar, Attorney at Law, represented respondent.

The matter was submitted on May 17, 2012.

FACTUAL FINDINGS

1. Dolores Weeks, Deputy Real Estate Commissioner of the Department of Real Estate of the State of California (Department) filed Statement of Issues No. H-4278 SD in her official capacity on February 6, 2012. Respondent filed a timely Notice of Defense.
2. On June 3, 2011, respondent signed a Salesperson Exam/License Application and submitted it to the Department.
3. Respondent was convicted in the San Diego County Superior Court of the following offenses:
 - a. On March 20, 1990, of violating Penal Code 602(j), trespass, a misdemeanor. The court placed respondent on probation for three years, fined her, and ordered her to a work program.

Respondent committed the offense on February 15, 1990. Respondent testified she was employed by Nordstrom's and took \$5.00 from the till.

b. On February 22, 1991, of violating Penal Code section 488, petty theft, a misdemeanor. The court placed respondent on probation for three years, sentenced her to serve one day in jail, and ordered her to perform a work program.

Respondent committed the offense by attempting to shoplift underwear and bras from a local Target store.

c. In 1989 or 1990, of violating either Vehicle Code section 23152, subdivision (a) or (b), driving under the influence of alcohol, a misdemeanor. No record of this conviction was introduced into evidence. Respondent recalled that she had been placed on probation, fined, ordered to perform community service, and ordered to take alcohol education classes.

4. Respondent's convictions are substantially related to the qualifications, functions, or duties of a real estate salesperson. Title 10, California Code of Regulations, section 2910, subdivision (a)(1), (8), and (10).

5. Question number 1 of Part D of the Salesperson Exam/License Application asks: "Have you ever been convicted of a misdemeanor or felony? Convictions expunged under Penal Code section 1203.4 must be disclosed. However, you may omit traffic citations which do not constitute a misdemeanor or felony. If yes, complete item 5." Respondent answered the question by placing a cross in the "No" box.

In the box provided under item 5 of the Background Information section of the application, respondent listed a driving under the influence conviction and indicated it occurred in February 1990. She did not list her 1990 trespass conviction or 1991 petty theft conviction.

In Item 7 of the Background Information section, respondent wrote:

"I regret that I cannot give complete specifics, as I am unable to obtain the information. I have taken a LIVESCAN in the hopes that I would be able to receive the information for this purpose, only to find out that I was not going to obtain a copy. I had some problems in my life about 24 years ago, and made some poor choices in my young life...I hope that my mistakes of my past will not impede my ability to obtain a real estate license. I visited the court of my conviction and they had no record of my case as it has been 21 yrs. now. I believe the code violation is Vehicle Code 23152a or 23152b. Again I do not know the specifics. There was also a 1987 infraction Z289155. I do not know what this was for as it was so long ago & I cannot obtain information on it..."

6. By letter dated August 16, 2011, the Department notified respondent that she had passed the real estate salesperson examination but that additional information would be

required before a determination on her application could be made. The letter does not explain what additional information would be required. Respondent called the Department's office on August 26.

On August 30, 2011, respondent signed a Confidential—Interview Information Statement (RE 515) and submitted it to the Department. She listed her three convictions on it. She also completed and signed two Conviction Detail Reports (RE 515D) describing the petty theft and trespass convictions. On the 515D for the petty theft conviction, respondent wrote: "I couldn't state the facts, or even dates because this offense happened so many years ago. I didn't have the information. I even went to the CMC-El Cajon to try and obtain this info prior to my application submittal. Records archived." She wrote a similar statement on the 515D for the trespass conviction.

It appears from the records that respondent submitted these forms following her telephone conversation with staff members of the Department, and prior to receiving a letter dated August 30, 2011 from Joseph Aiu, District Manager of the San Diego office, informing her of the department's background investigation of her criminal convictions.

Respondent obtained a copy of her rap sheet from the California Department of Justice and mailed a copy of it to the Department, which received it on September 12, 2011. The rap sheet shows respondent had been convicted of petty theft and trespass. On October 12, 2011, respondent completed another Conviction Detail Report (RE 515D) in which she described her DUI conviction, and submitted it to the Department.

On December 23, 2011, Patricia Davies, a special investigator for the Department, interviewed respondent. Respondent explained the circumstances surrounding her convictions and indicated that she thought she had disclosed her convictions on her application but that this information might have been on a previous draft that her son had shredded. She added that she obtained the rap sheet after she submitted her application and submitted the rap sheet as soon as she got it.

On November 9, 2011, Ms. Davies wrote the San Diego County Superior Court seeking information about respondent's convictions. On November 21, the clerk of the court informed Ms. Davies that no criminal cases were found and directed her to contact the Department of Justice.

7. Respondent's application contains misleading information in that it does not set forth her convictions of trespass and petty theft.

8. Respondent is 44 years old and has lived in San Diego for the last 34 years. She graduated from high school in 1986 and has taken classes at community colleges on occasion over the years, including classes in accounting and real estate.

Regarding her convictions, respondent testified that she got her DUI conviction in 1989 when she turned 21 but served no time in jail. She did served five days in jail following her arrest for stealing money from Nordstrom's. She explained that she took the

money because she had been working at night, she had no place to live and no gas in her car, she needed the money to buy gas, and took \$5.00 from the till. She testified that she took the bra and panties from Target at a time in her life when she had no home and was living with friends. She was a transient and, as she described it, "mixed up with shady people."

Respondent described the significant changes she has made in her life since 1991. She moved away and then met her husband, and they have been together for the last 21-22 years. She testified she has had no connection with her old life and started a new life. She has two children, ages 9 and 11, and is a stay-at-home mother. She testified she volunteers at the school, is a room parent, and serves as a team mother for her children's sports teams. In her capacity as a volunteer, she testified she has had to collect and handle money and keep records, and has done so honestly. In addition, after her marriage, respondent testified she worked for small and large companies such as Time Warner and Sorrento Networks, and handled daily banking, general ledger, cutting checks for thousands of dollars to pay vendors, handling petty cash, and so forth without incident.

Respondent testified that she has been interested in real estate for years and always loved looking at homes. She became interested in obtaining a real estate license after speaking to the wife of a broker whom she knew from her community, Adam Peck. His wife told respondent that she thought respondent would be good at real estate, and since then respondent has worked for Mr. Peck and received training from him. She works in his office handling phone calls, putting out flyers, and so forth. She indicated Mr. Peck has agreed to be her broker if she should receive a license.

Regarding her application, respondent testified she read the section entitled "Help Avoid Denial of Your License Application" and the section on convictions. She testified that in Part D of the application, she placed a check mark in the No boxes but could not explain why there was a cross placed in question number 1 which asked if she had ever been convicted of a crime. In any event, she testified she filled in section 5 of the application and listed her DUI conviction and looked up the code section on line. Respondent testified she did not have any court files or information when she filled out the application, although she went to the courthouse, and submitted a livescan. She testified she believed she would obtain the information from these sources but she obtained nothing. When she wrote her narrative in question 7, she indicated she could not obtain the information and believed the information she wrote was correct.

Respondent testified that after she received the Department's letter of August 16, 2011, she called the Department and offered to provide information in order to speed things up. She was told to fill out a 515 which she could get from the Department's website, and she did that. Respondent testified she believed that she had provided the information and had disclosed her convictions. She reiterated that she tried to get the information from the court and through a livescan but the records were not available. Respondent testified she then submitted a second livescan to the Department of Justice and was able to obtain her rap sheet, which she used to complete the two 515D forms. She testified she submitted the rap sheet to the Department. After Ms. Davies contacted her by telephone on October 11,

respondent testified she called every couple of weeks to see if there was anything further she could do.

9. John Howell, Jr. is respondent's husband. He testified at the hearing that they met in 1990 and married in 1996. He testified that respondent told him about her past, explaining that she had had a difficult time with her parents and they had ousted her from their home when she was a teenager. Mr. Howell testified that since they met, respondent has been honest and trusting, and has shown none of the behavior or signs of her previous life. He testified that she has a reputation for truth in the community, the teachers for whom she volunteers love her, and she has never been accused of stealing anything.

10. Adam Peck testified he is a licensed real estate broker and has known respondent for five years. They live in the same community and met through their children's activities. He testified that his wife talked to respondent and told her she thought respondent would make a good realtor, and he then advised her to study and take the examination. Mr. Peck is the broker for Torrey Pacific Properties in Del Mar, and has five agents under him. He testified he would be respondent's broker, even if she were given a restricted license.

Mr. Peck knew about respondent's conviction although he did not know the details, and knew about the problems she was having with her application. He testified that she has had no criminal convictions since 1991 and that everyone he knew who also knew respondent has had good things to say about her.

Mr. Peck also wrote a letter in support of respondent's application. He indicated he and his wife know and trust respondent as a responsible mother and a dependable figure in their community, and that respondent has high moral character and is always concerned and interested in her friends and the community's welfare. He reiterated that he was confident that respondent's difficulties with the law were part of her distant past and had no bearing on her current life, or her future as a real estate agent.

11. Respondent submitted two other letters attesting to her good character.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480 provides in part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

“(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting

probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

[¶]. . .

“The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

[¶]. . .

“(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.”

2. Business and Professions Code section 10177 provides in pertinent part:

“The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following . . .

“(a) Procured or attempted to procure, a real estate license or license renewal, for himself . . . by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

“(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of not guilty, or dismissing the accusation or information.”

3. In *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1994) 22 Cal.App.4th 1814, 1821, the court pointed out that one of the purposes of the Real Estate Law was to insure that persons holding real estate licenses will be honest and truthful in their dealings with the public. “Accordingly, the real estate commissioner may discipline a licensed broker for failure to disclose even if the broker was not intentionally fraudulent or dishonest (citation omitted) and it is immaterial that he received no advantage from his failure to disclose.”

4. Cause was established to deny respondent’s real estate salesperson license application pursuant to Business and Professions Code sections 480, subdivision (a)(1) and 10177, subdivision (b), conviction of crimes substantially related to the qualifications, functions, and duties of a real estate licensee, by reason of Findings 3 and 4.

5. Cause was established to deny respondent's real estate salesperson license application pursuant to Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a), making a false and material statement of fact on an application, by reason of Findings 3, 4, 5, 6, and 7.

6. Title 10, California Code of Regulations, section 2911 provides in part:

"The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinance from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

(i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.”

7. The evidence in light of those criteria shows that respondent was convicted of three misdemeanor offenses more than 20 years ago and she completed her sentences. She has not had the convictions expunged. The two theft-related offenses were very minor offenses: the trespass involved respondent's theft of \$5.00 from her employer, and her petty theft involved her attempt to shoplift underwear and bras. There have been no subsequent criminal cases brought against respondent. These convictions are insufficient by themselves, given the passage of time and respondent's good conduct since then, to warrant denial of her application.

The evidence also established that respondent failed to disclose her two theft-related convictions. It is of some concern that respondent placed a cross in the No box in response to the question "Have you ever been convicted of a misdemeanor or felony?" Respondent did not provide a satisfactory explanation for this incorrect response. Nevertheless, later in the application, respondent did disclose her DUI conviction which ameliorates her incorrect answer to some extent. She then referred to a "1987 infraction" in her narrative, but provided no details.

Respondent testified that she made several attempts to obtain information regarding her criminal history, and reported those efforts in her application and the subsequent forms she submitted to the Department. The question is whether respondent's failure to disclose her two theft-related convictions was intentional or an honest failure to recall the details of her convictions. Respondent could have thought that without a record of those convictions, the Department would not learn of them, and a criminal history with one conviction is substantially better than a record with two convictions. And she could have believed that by providing a vague reference to an "infraction" in 1987, she would satisfy her obligation to disclose her convictions without having to provide details which might jeopardize her application.

A person's character for honesty and integrity is an important qualification for a real estate license because members of the public rely on the integrity of the licensee representing them. It is equally important that a real estate salesperson disclose all information relating to a transaction. The real estate application is an opportunity for an applicant for licensure to demonstrate his or her ability to disclose information, even if that information related to events occurring long ago. Even if a failure to disclose information on an application is unintentional, the failure to disclose does not prevent the Commissioner from denying the application. See *Norman I. Krug Real Estate Investments, Inc. v. Praszker, supra*.

Based upon respondent's efforts to obtain court information regarding her criminal history both before and after she submitted her application, and her demeanor while testifying, it does not appear that respondent intentionally crafted her responses in her application in order to both reveal her past but provide as little reason as possible to justify a denial of her application. It is much more likely that respondent did not recall the details of two minor offenses that occurred more than 20 years earlier. While this conclusion does not excuse respondent's failure to make a better effort to recall those convictions and provide more complete information about them, it does support a determination that her application should not be denied because of it.

Respondent presented substantial evidence of rehabilitation. She testified she completely turned her life around after she met her husband, and that testimony is supported by the testimony of her husband and Mr. Peck. She is an active member of her community, volunteers in her children's school, and has been regularly employed over the years.

On balance, respondent's evidence of rehabilitation, and in particular the passage of more than 20 years since respondent committed a criminal offense and her sincere, although incomplete effort to document her criminal past, is sufficient to establish that she does not represent a threat to the public and may be entrusted with a real estate salesperson license. However, respondent's evidence did not establish that the license should not be issued without restrictions.

ORDER

Respondent Tiffany M. Howell's application for a real estate salesperson's license is denied; provided, however, a restricted real estate salesperson's 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. 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 a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to 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.

2. 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 years after the date of the issuance of the preceding restricted license.

3. 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.

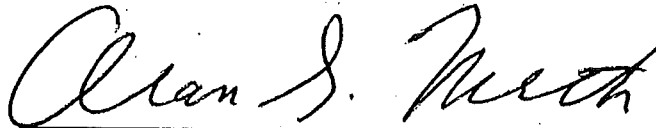
4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

5. 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: May 23, 2012

A handwritten signature in cursive script that reads "Alan S. Meth". The signature is written in black ink and is positioned above a horizontal line.

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings