

FEB 16 2006.

By L. Frost

## STATE OF CALIFORNIA

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Respondent .

### DECISION AFTER REJECTION

On December 21, 2005, the Proposed Decision of the Administrative Law Judge was issued, and determined, among other things, that Respondent's application for a real estate salesperson license should be denied with the right to a

1 restricted salesperson license on various terms, conditions and  
2 restrictions.

3 On January 20, 2006, the Commissioner rejected the  
4 Proposed Decision of December 21, 2005.

5 The parties wish to settle this matter without further  
6 proceedings.

7 IT IS HEREBY STIPULATED by and between Respondent and  
8 the Complainant, acting by and through John Van Driel, Counsel  
9 for the Department of Real Estate, as follows for the purpose of  
10 settling and disposing of the Statement of Issues filed by  
11 Complainant.

12 1. It is understood by the parties that the Real  
13 Estate Commissioner may adopt the Stipulation and Agreement as  
14 his decision in this matter, thereby imposing the penalty and  
15 sanctions on Respondent's application for a real estate license  
16 as set forth in the below "Decision and Order". In the event  
17 the Commissioner in his discretion does not adopt the  
18 Stipulation and Settlement, the Stipulation shall be void and of  
19 no effect; the Commissioner will review the transcript and the  
20 evidence in the case, and will issue his Decision after  
21 Rejection as his Decision in this matter.

22 2. By reason of the foregoing and solely for the  
23 purpose of settlement of the Statement of Issues without further  
24 administrative proceedings, it is stipulated and agreed that the  
25 following shall be adopted as the Commissioner's Decision:

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FACTUAL FINDINGS

1  
2 1. On January 4, 2005, Serena Lachelle Kelly  
3 (respondent) submitted an application to the Department of  
4 Real Estate (Department) for a real estate salesperson's  
5 license.

6 2. On September 7, 2005, Charles Koenig, a Deputy Real  
7 Estate Commissioner of the State of California, made and filed  
8 a Statement of Issues in his official capacity.

9 *Respondent's Criminal Convictions*

10 3. On August 28, 2001, in the Superior Court of  
11 California, County of Alameda, in case number 342177  
12 respondent was convicted, on a plea of no contest, of  
13 violating Penal Code section 532, subdivision (a), (False  
14 Pretenses), a misdemeanor. The court suspended imposition of  
15 sentence and respondent was placed on three years informal  
16 probation with various terms and conditions including seven  
17 days in county jail (on the work project) with credit for two  
18 days served and a fine of \$100. Respondent was ordered to  
19 stay out of the San Leandro Honda dealership.

20 4. The facts and circumstances of respondent's crime  
21 occurred between February 5 and 11, 2000. Respondent was  
22 shopping for a car and met a man who promised to help her with  
23 the purchase because she had "bad credit." She found a new  
24 Honda Accord, which she wanted to buy from the San Leandro  
25 Honda dealership and made a \$1,500 down payment using her own  
26 funds. For the remaining cost, respondent submitted  
27 fraudulent documents provided by the man in order to qualify

1 for financing through the dealership's "college graduate  
2 program." The dealership subsequently discovered that the  
3 documents were false, reported the matter to the police, and  
4 respondent returned the vehicle.

5 5. Respondent completed the work project, paid the fine  
6 and otherwise successfully completed her three-year probation  
7 on August 28, 2004.

8 6. On June 3, 2005, the court granted respondent's  
9 petition, pursuant to Penal Code section 1203.4, and the false  
10 pretenses conviction was expunged.

11 7. Respondent's conviction for false pretenses involved  
12 the use of fraud and falsehood to achieve an end because  
13 respondent knowingly submitted a falsified diploma and social  
14 security card as well as false employment information in order  
15 to buy a new Honda Accord. The conviction also involved the  
16 doing of an unlawful act, namely submission of fraudulent  
17 documents and information, with the intent of conferring a  
18 financial or economic benefit upon the perpetrator.

19 8. On October 12, 2001, in the Superior Court of  
20 California, County of Marin, in case number SC119358B,  
21 respondent was convicted, on a plea of guilty, of violating  
22 Penal Code section 459, (Commercial Burglary), a misdemeanor.  
23 The court suspended imposition of sentence and respondent was  
24 placed on three years supervised probation with various terms  
25 and conditions including 61 days in county jail (on house  
26 arrest), restitution fine of \$100 and participation in any  
27 treatment program as directed by the probation officer.

1        9.    The facts and circumstances of the commercial  
2 burglary occurred on May 20, 2001 at the Macy's store in Corte  
3 Madera. Respondent and a friend entered the store so that  
4 respondent could return merchandise valued at \$318 that was  
5 purchased with fraudulent checks at another Macy's. During  
6 this shopping trip, respondent assisted her friend when the  
7 friend purchased handbags worth \$647.35 using fraudulent,  
8 manufactured, checks. Respondent knew that her friend was  
9 using "bad checks."

10        At hearing, respondent admitted that she participated in  
11 this "bad check scheme" two times and in making fraudulent  
12 returns to stores two to three times. Respondent used false  
13 identification and fraudulent, manufactured checks in  
14 committing these offenses.

15        10. Respondent completed 61 days on house arrest, paid  
16 the fine and was excused from participation in a treatment  
17 program or counseling because she does not have a drug or  
18 alcohol problem. She successfully completed her three-year  
19 probation on October 12, 2004.

20        11. On August 12, 2005, the court granted respondent's  
21 petition, pursuant to Penal Code section 1203.4, and the  
22 commercial burglary conviction was expunged.

23        12. Respondent's conviction for commercial burglary  
24 involved the use of fraud, falsehood and misrepresentation to  
25 achieve an end because respondent returned merchandise which  
26 she had not purchased to receive a cash refund. The  
27 conviction also involved the doing of an unlawful act with the

1 intent of conferring a financial or economic benefit upon the  
2 perpetrator because respondent entered Macy's intending to  
3 fraudulently return merchandise so that she could receive a  
4 cash refund.

5 *Factors in Rehabilitation*

6 13. Respondent graduated from high school and has  
7 completed two Associate of Arts degrees in liberal arts -- at  
8 Vista Community College and more recently (May 2005) at San  
9 Francisco City College. She has completed a real estate  
10 property management course. Respondent completed the  
11 requirements to become a licensed vocational nurse (LVN) last  
12 May and is now preparing to take her licensure test. She has  
13 been attending school and working steadily for several years,  
14 at times holding down two jobs. Since July or August 2005,  
15 respondent has been working as a temp for Advent Mortgage  
16 where she assists loan processing by doing packaging and  
17 mailing. During tax season, she has also worked for Jackson  
18 Hewitt in past years.

19 14. Respondent is divorced and raising her two children  
20 as a single parent. Her daughter attends college and works,  
21 and her younger son attends school and is active in various  
22 sports. Respondent is involved a great deal with her  
23 children's activities and is team mom for her son's basketball  
24 team and attends all his games. She attends church and has  
25 created a stable home environment for her children.

26 15. At the time the offenses occurred in 2000 and 2001,  
27 respondent's marriage was breaking up and her brother-in-law

1 died. Respondent was in an increasingly abusive relationship,  
2 was depressed and experiencing low self-esteem. She kept  
3 trying to move forward and "pushed things down" as a way to  
4 cope. She wanted to "prove something" after her marriage  
5 broke up, to show that what happened wouldn't stop her. She  
6 needed a car and feels she made a "bad decision" because she  
7 could have bought a used car. She knew it was dishonest to  
8 submit the fraudulent papers to the car dealership. At the  
9 time of the second offense, respondent was not working and  
10 needed money. She was caring for herself, her children, her  
11 sister-in-law and niece. Respondent knew what she was doing  
12 was wrong and realized when she went to jail that she could  
13 lose her children and be separated from her family. After she  
14 was placed on probation, respondent went back to school and  
15 focused on her family and church for support. She is doing  
16 better with stress and talks with her family and friends to  
17 cope rather than trying to handle everything herself.

18 16. Respondent acknowledges making "several very bad  
19 choices" and using poor judgment in committing the two crimes.  
20 She was trying to find "the easy way out." Respondent is no  
21 longer in contact with any of the individuals involved in her  
22 two crimes. She has rehabilitated herself by continuing her  
23 education, getting re-involved in activities with her  
24 children, other family and close friends and by improving her  
25 self-esteem. She believes she is a much stronger person today  
26 and not so easily influenced.

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1        17. Respondent's friend, Latayana R. Vaughn, has known  
2 respondent for 13 years. They were engaged to brothers and  
3 are "like in-laws." Ms. Vaughn is aware of respondent's  
4 convictions and has seen changes in her and seen her grow.  
5 She believes that what happened is a one-time thing and knows  
6 that respondent regretted her mistakes. Ms. Vaughn describes  
7 respondent as dependable, honest and "inspirational"  
8 particularly in her ability to keep families together and  
9 support others. This assessment was echoed in a letter from  
10 another of respondent's friends, Sherenna LeNoir.

11        18. Respondent plans to work in both nursing and real  
12 estate. Her mother was in real estate so respondent  
13 understands the fluctuating income and expects real estate to  
14 be a financial back-up for her. Respondent has been offered a  
15 position in Richmond with ATM Real Estate. She has known the  
16 broker, Bob Robinson, for a couple years and he has encouraged  
17 her. Mr. Robinson and respondent's sponsor at the brokerage  
18 know about her convictions and are still willing to have her  
19 work for them even if she had a restricted license.

20        19. Although respondent's crimes are acts of fraud and  
21 dishonesty, she has accepted responsibility for her past  
22 actions. She testified credibly about the reasons for her  
23 mistakes and her efforts to change and effect rehabilitation.  
24 She has worked diligently to complete her education, move  
25 forward and provide a positive role model for her children.  
26 Respondent has persuasively demonstrated that she has changed  
27 and is unlikely to be a danger to members of the public.



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1           2. Pursuant to Business and Professions Code section  
2 10177, subdivision (b), the commissioner may deny the issuance  
3 of a real estate license to an applicant if the applicant has,  
4 "Entered a plea of guilty or nolo contendere to, or been found  
5 guilty of, or been convicted of, a felony or a crime of moral  
6 turpitude, . . ." Neither of respondent's convictions is a  
7 felony but each is a crime of moral turpitude. The crime of  
8 false pretenses includes an intent to defraud which has long  
9 been recognized as "a principal element of moral turpitude."  
10 (*In re Schwartz* (1982) 31 Cal.3d 395, 400, citations omitted,  
11 *Carey v. Board of Medical Examiners* (1977) 66 Cal.App.3d 538,  
12 541, citations omitted.) Similarly, the crime of burglary  
13 includes an intent to commit larceny and has been found to be  
14 a "'fundamentally deceitful act' demonstrating a "'readiness  
15 to do evil, '..." (*People v. Muldrow* (1988) 202 Cal.App.3d 636,  
16 645.) The intent element for burglary is the same whether the  
17 offense is a commercial or residential burglary. Thus, both  
18 respondent's conviction for false pretenses, as set forth in  
19 Factual Findings 3, 4, and 7, and her conviction for  
20 commercial burglary, as set forth in Factual Findings 8, 9 and  
21 12, are crimes of moral turpitude.

22           3. Under Business and Professions Code section 10177,  
23 subdivision (b), "a subsequent order under Section 1203.4 of  
24 the Penal Code allowing that licensee [or applicant] to  
25 withdraw his or her plea of guilty and to enter a plea of not  
26 guilty, or dismissing the accusation or information" does not  
27 render the conviction invalid for licensing purposes.

1 Respondent's two convictions may be considered by the  
2 Department despite the expungements granted by the court as  
3 set forth in Factual Findings 6 and 11.

4       4. The Department established cause, by a preponderance  
5 of the evidence, for denial of respondent's real estate  
6 license application under Business and Professions Code  
7 section 480, subdivision (a), and section 10177, subdivision  
8 (b), and California Code of Regulations, title 10, section  
9 2910 and by reason of the criminal convictions set forth in  
10 Factual Findings 3 through 12, inclusive, jointly and  
11 severally.

12       5. Under the California Code of Regulations, title 10,  
13 section 2911 and pursuant to section 482, subdivision (a) of  
14 the Business and Professions Code, rehabilitation of the  
15 applicant must be evaluated using several criteria for the  
16 Department to determine "whether or not to deny issuance...on  
17 account of a crime or act committed by the applicant."  
18 Respondent has proved, by a preponderance of the evidence,  
19 that she has accomplished significant rehabilitation under  
20 California Code of Regulations, title 10, section 2911  
21 criteria (a), (c), (e), (g), (h), (i), (m), and (n) as set  
22 forth in Factual Findings 13 through 19, inclusive. However,  
23 because only four years have passed since her last conviction  
24 and only one year since she completed probation, a restricted  
25 license would best protect the public at this time.

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1 ORDER

2 Respondent Serena Lachelle Kelly's application for a real  
3 estate salesperson license is denied pursuant to Legal  
4 Conclusion 4; provided, however, a restricted real estate  
5 salesperson license shall be issued to respondent pursuant to  
6 Section 10156.5 of the Business and Professions Code. The  
7 restricted license issued to the respondent shall be subject  
8 to all of the provisions of Section 10156.7 of the Business  
9 and Professions Code and to the following limitations,  
10 conditions and restrictions imposed under authority of Section  
11 10156.6 of that Code:

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

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

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

25 2. Respondent shall not be eligible to apply for the  
26 issuance of an unrestricted real estate license nor the  
27 removal of any of the conditions, limitations or restrictions

1 attaching to the restricted license until three years have  
2 elapsed from the date of issuance of the restricted license to  
3 respondent:

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

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

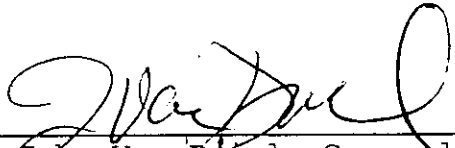
12 (b) That the employing broker will carefully review  
13 all transaction documents prepared by the restricted licensee  
14 and otherwise exercise close supervision over the licensee's  
15 performance of acts for which a license is required.

16 4. Respondent's restricted real estate salesperson license  
17 is issued subject to the requirements of Section 10153.4 of the  
18 Business and Professions Code, to wit: Respondent shall, within  
19 eighteen (18) months of the issuance of the restricted license,  
20 submit evidence satisfactory to the Commissioner of successful  
21 completion, at an accredited institution, of a course in real  
22 estate practices and one of the courses listed in Section  
23 10153.2, other than real estate principles, advanced legal  
24 aspects of real estate, advanced real estate finance or advanced  
25 real estate appraisal. If Respondent fails to timely present to  
26 the Department satisfactory evidence of successful completion of  
27 the two required courses, the restricted license shall be

1 automatically suspended effective eighteen (18) months after the  
2 date of its issuance. Said suspension shall not be lifted unless,  
3 prior to the expiration of the restricted license, Respondent has  
4 submitted the required evidence of course completion and the  
5 Commissioner has given written notice to Respondent of lifting of  
6 the suspension.

7 5. Pursuant to Section 10154, if Respondent has not  
8 satisfied the requirements for an unqualified license under  
9 Section 10153.4, Respondent shall not be entitled to renew the  
10 restricted license, and shall not be entitled to the issuance of  
11 another license which is subject to Section 10153.4 until four  
12 years after the date of the issuance of the preceding restricted  
13 license.


14  
15 1/24/06  
16 DATED

  
17 John Van Driel, Counsel  
18 DEPARTMENT OF REAL ESTATE

19 \* \* \*

20 I have read the Stipulation and Agreement, and its  
21 terms are understood by me and are agreeable and acceptable to  
22 me. I willingly and voluntarily agree to enter into this  
23 Stipulation.

24 1/25/06  
25 DATED

  
26 SERENA LACHELLE KELLY  
27 Respondent

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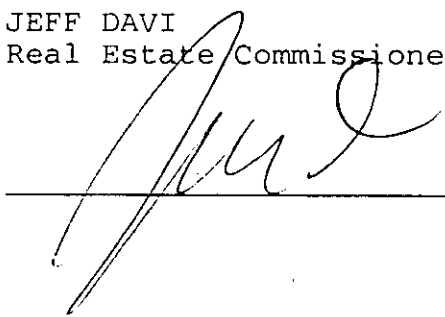
DECISION AND ORDER

The foregoing Stipulation and Agreement is hereby  
adopted by the Real Estate Commissioner as his Decision and  
Order.

This Decision shall become effective at 12 o'clock  
noon on March 8, 2006.

IT IS SO ORDERED 2-9, 2006.

JEFF DAVI  
Real Estate Commissioner



FILE

FILED

JAN 20 2006.

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )  
SERENA LACHELLE KELLY, )  
Respondent. )

No. H-4339 SAC

N-2005100816

NOTICE

TO: SERENA LACHELLE KELLY, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 21, 2005, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 21, 2005, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held November 16, 2005, and any written argument hereafter submitted on behalf of Respondent and Complainant.



1           Written argument of Respondent to be considered by me  
2 must be submitted within 15 days after receipt of the transcript  
3 of the proceedings of November 16, 2005, at the Sacramento office  
4 of the Department of Real Estate unless an extension of the time  
5 is granted for good cause shown.

6           Written argument of Complainant to be considered by me  
7 must be submitted within 15 days after receipt of the argument of  
8 Respondent at the Sacramento office of the Department of Real  
9 Estate unless an extension of the time is granted for good cause  
10 shown.

11           DATED: \_\_\_\_\_

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13                           JEFF DAVI  
14                           Real Estate Commissioner  
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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

SERENA LACHELLE KELLY,

Respondent

Case No. H-4339 SAC

OAH No. N2005100816

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge JoAnn Irwin Eshelman, Office of Administrative Hearings, State of California, on November 16, 2005, in Sacramento, California.

John Van Driel, Counsel, Department of Real Estate, represented complainant.

Serena Lachelle Kelly represented herself.

Evidence was received and the record was held open for Ms. Kelly to submit proof of expungement of a conviction before November 23, 2005 at 5 pm. On November 21, 2005, the document was received with a cover letter from Mr. Van Driel offering no objection to its admission. The document and Mr. Van Driel's letter was admitted as respondent's exhibit C, and the case was submitted for decision on November 21, 2005.

**FACTUAL FINDINGS**

1. On January 4, 2005, Serena Lachelle Kelly (respondent) submitted an application to the Department of Real Estate (Department) for a real estate salesperson's license.

2. On September 7, 2005, Charles Koenig, a Deputy Real Estate Commissioner of the State of California, made and filed a Statement of Issues in his official capacity.

*Respondent's Criminal Convictions*

3. On August 28, 2001, in the Superior Court of California, County of Alameda, in case number 342177 respondent was convicted, on a plea of no contest, of violating Penal Code section 532, subdivision (a), (False Pretenses), a misdemeanor. The court suspended

imposition of sentence and respondent was placed on three years informal probation with various terms and conditions including seven days in county jail (on the work project) with credit for two days served and a fine of \$100. Respondent was ordered to stay out of the San Leandro Honda dealership.

4. The facts and circumstances of respondent's crime occurred between February 5 and 11, 2000. Respondent was shopping for a car and met a man who promised to help her with the purchase because she had "bad credit." She found a new Honda Accord, which she wanted to buy from the San Leandro Honda dealership and made a \$1,500 down payment using her own funds. For the remaining cost, respondent submitted fraudulent documents provided by the man in order to qualify for financing through the dealership's "college graduate program." The dealership subsequently discovered that the documents were false, reported the matter to the police, and respondent returned the vehicle.

5. Respondent completed the work project, paid the fine and otherwise successfully completed her three-year probation on August 28, 2004.

6. On June 3, 2005, the court granted respondent's petition, pursuant to Penal Code section 1203.4, and the false pretenses conviction was expunged.

7. Respondent's conviction for false pretenses involved the use of fraud and falsehood to achieve an end because respondent knowingly submitted a falsified diploma and social security card as well as false employment information in order to buy a new Honda Accord. The conviction also involved the doing of an unlawful act, namely submission of fraudulent documents and information, with the intent of conferring a financial or economic benefit upon the perpetrator.

8. On October 12, 2001, in the Superior Court of California, County of Marin, in case number SC119358B, respondent was convicted, on a plea of guilty, of violating Penal Code section 459, (Commercial Burglary), a misdemeanor. The court suspended imposition of sentence and respondent was placed on three years supervised probation with various terms and conditions including 61 days in county jail (on house arrest), restitution fine of \$100 and participation in any treatment program as directed by the probation officer.

9. The facts and circumstances of the commercial burglary occurred on May 20, 2001 at the Macy's store in Corte Madera. Respondent and a friend entered the store so that respondent could return merchandise valued at \$318 that was purchased with fraudulent checks at another Macy's. During this shopping trip, respondent assisted her friend when the friend purchased handbags worth \$647.35 using fraudulent, manufactured, checks. Respondent knew that her friend was using "bad checks."

At hearing, respondent admitted that she participated in this "bad check scheme" two times and in making fraudulent returns to stores two to three times. Respondent used false identification and fraudulent, manufactured checks in committing these offenses.

10. Respondent completed 61 days on house arrest, paid the fine and was excused from participation in a treatment program or counseling because she does not have a drug or alcohol problem. She successfully completed her three-year probation on October 12, 2004.

11. On August 12, 2005, the court granted respondent's petition, pursuant to Penal Code section 1203.4, and the commercial burglary conviction was expunged.

12. Respondent's conviction for commercial burglary involved the use of fraud, falsehood and misrepresentation to achieve an end because respondent returned merchandise which she had not purchased to receive a cash refund. The conviction also involved the doing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator because respondent entered Macy's intending to fraudulently return merchandise so that she could receive a cash refund.

### *Factors in Rehabilitation*

13. Respondent graduated from high school and has completed two Associate of Arts degrees in liberal arts -- at Vista Community College and more recently (May 2005) at San Francisco City College. She has completed a real estate property management course. Respondent completed the requirements to become a licensed vocational nurse (LVN) last May and is now preparing to take her licensure test. She has been attending school and working steadily for several years, at times holding down two jobs. Since July or August 2005, respondent has been working as a temp for Advent Mortgage where she assists loan processing by doing packaging and mailing. During tax season, she has also worked for Jackson Hewitt in past years.

14. Respondent is divorced and raising her two children as a single parent. Her daughter attends college and works, and her younger son attends school and is active in various sports. Respondent is involved a great deal with her children's activities and is team mom for her son's basketball team and attends all his games. She attends church and has created a stable home environment for her children.

15. At the time the offenses occurred in 2000 and 2001, respondent's marriage was breaking up and her brother-in-law died. Respondent was in an increasingly abusive relationship, was depressed and experiencing low self-esteem. She kept trying to move forward and "pushed things down" as a way to cope. She wanted to "prove something" after her marriage broke up, to show that what happened wouldn't stop her. She needed a car and feels she made a "bad decision" because she could have bought a used car. She knew it was dishonest to submit the fraudulent papers to the car dealership. At the time of the second offense, respondent was not working and needed money. She was caring for herself, her children, her sister-in-law and niece. Respondent knew what she was doing was wrong and realized when she went to jail that she could lose her children and be separated from her family. After she was placed on probation, respondent went back to school and focused on her family and church for support. She is doing better with stress and talks with her family and friends to cope rather than trying to handle everything herself.

16. Respondent acknowledges making "several very bad choices" and using poor judgment in committing the two crimes. She was trying to find "the easy way out." Respondent is no longer in contact with any of the individuals involved in her two crimes. She has rehabilitated herself by continuing her education, getting re-involved in activities with her children, other family and close friends and by improving her self-esteem. She believes she is a much stronger person today and not so easily influenced.

17. Respondent's friend, Latayana R. Vaughn, has known respondent for 13 years. They were engaged to brothers and are "like in-laws." Ms. Vaughn is aware of respondent's convictions and has seen changes in her and seen her grow. She believes that what happened is a one-time thing and knows that respondent regretted her mistakes. Ms. Vaughn describes respondent as dependable, honest and "inspirational" particularly in her ability to keep families together and support others. This assessment was echoed in a letter from another of respondent's friends, Sherenna LeNoir.

18. Respondent plans to work in both nursing and real estate. Her mother was in real estate so respondent understands the fluctuating income and expects real estate to be a financial back-up for her. Respondent has been offered a position in Richmond with ATM Real Estate. She has known the broker, Bob Robinson, for a couple years and he has encouraged her. Mr. Robinson and respondent's sponsor at the brokerage know about her convictions and are still willing to have her work for them even if she had a restricted license.

19. Although respondent's crimes are acts of fraud and dishonesty, she has accepted responsibility for her past actions. She testified credibly about the reasons for her mistakes and her efforts to change and effect rehabilitation. She has worked diligently to complete her education, move forward and provide a positive role model for her children. Respondent has persuasively demonstrated that she has changed and is unlikely to be a danger to members of the public.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a)(1) permits the Department to deny a license on the ground that the applicant has been convicted of a crime following a plea of guilty or no contest. The crime must be substantially related to the qualifications, functions, or duties of the business or profession for which the application is made. The California Code of Regulations, title 10, section 2910, subdivision (a) provides criteria to determine substantial relationship within the meaning of Business and Professions Code section 480. The criteria which apply to respondent's convictions are as follows.

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

Under the criteria of California Code of Regulations, title 10, section 2910, subdivision (a), respondent's convictions for false pretenses and commercial burglary are substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Business and Professions Code section 480, subdivision (a) as set forth in Factual Findings 3 through 12, inclusive.

2. Pursuant to Business and Professions Code section 10177, subdivision (b), the commissioner may deny the issuance of a real estate license to an applicant if the applicant has, "Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime of moral turpitude, . . ." Neither of respondent's convictions is a felony but each is a crime of moral turpitude. The crime of false pretenses includes an intent to defraud which has long been recognized as "a principal element of moral turpitude." (*In re Schwartz* (1982) 31 Cal.3d 395, 400, citations omitted, *Carey v. Board of Medical Examiners* (1977) 66 Cal.App.3d 538, 541, citations omitted.) Similarly, the crime of burglary includes an intent to commit larceny and has been found to be a "'fundamentally deceitful act' demonstrating a "'readiness to do evil,' . . ." (*People v. Muldrow* (1988) 202 Cal.App.3d 636, 645.) The intent element for burglary is the same whether the offense is a commercial or residential burglary. Thus, both respondent's conviction for false pretenses, as set forth in Factual Findings 3, 4, and 7, and her conviction for commercial burglary, as set forth in Factual Findings 8, 9 and 12, are crimes of moral turpitude.

3. Under Business and Professions Code section 10177, subdivision (b), "a subsequent order under Section 1203.4 of the Penal Code allowing that licensee [or applicant] to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information" does not render the conviction invalid for licensing purposes. Respondent's two convictions may be considered by the Department despite the expungements granted by the court as set forth in Factual Findings 6 and 11.

4. The Department established cause, by a preponderance of the evidence, for denial of respondent's real estate license application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b), and California Code of Regulations, title 10, section 2910 and by reason of the criminal convictions set forth in Factual Findings 3 through 12, inclusive, jointly and severally.

5. Under the California Code of Regulations, title 10, section 2911 and pursuant to section 482, subdivision (a) of the Business and Professions Code, rehabilitation of the applicant must be evaluated using several criteria for the Department to determine "whether or not to deny issuance . . . on account of a crime or act committed by the applicant." Respondent has proved, by a preponderance of the evidence, that she has accomplished significant rehabilitation under California Code of Regulations, title 10, section 2911 criteria (a), (c), (e), (g), (h), (i), (m), and (n) as set forth in Factual Findings 13 through 19, inclusive. However, because only four years have passed since her last conviction and only one year since she completed probation, a restricted license would best protect the public at this time.

ORDER

Respondent Serena Lachelle Kelly's application for a real estate salesperson license is denied pursuant to Legal Conclusion 4; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that 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 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 three 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: Dec 21, 2005

JOANN I. ESHELMAN

Administrative Law Judge

Office of Administrative Hearings

1 JOHN VAN DRIEL, Counsel (SBN 84056)  
2 Department of Real Estate  
3 P. O. Box 187007  
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5 Telephone: (916) 227-0789  
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FILED  
SEP -7 2005

DEPARTMENT OF REAL ESTATE

By L. Frost

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )

No. H-4339 SAC

12 SERENA LASHELL KELLY, )

STATEMENT OF ISSUES

13 Respondent. )

14  
15 The Complainant, Charles Koenig, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against SERENA LASHELL KELLY (hereinafter "Respondent"), is  
18 informed and alleges as follows:

19 I

20 Complainant makes this Statement of Issues in his  
21 official capacity and not otherwise.

22 II

23 Respondent made application to the Department of Real  
24 Estate of the State of California for a real estate salesperson  
25 license on or about May 25, 2005 with the knowledge and  
26 understanding that any license issued as a result of said

27 ///



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

3 III

4 On or about August 28, 2001, in the Alameda County  
5 Superior Court, Respondent was convicted of a violation of  
6 Section 532(A) (obtaining property by false pretenses) of the  
7 California Penal Code, a crime involving moral turpitude and  
8 which bears a substantial relationship under Section 2910, Title  
9 10, California Code of Regulations, to the qualifications,  
10 functions, or duties of a real estate licensee.

11 IV


12 On or about October 12, 2001, in the Marin County  
13 Superior Court, Respondent was convicted of a violation of  
14 Section 459 (burglary) of the California Penal Code, a crime  
15 involving moral turpitude and which bears 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 V

20 The crimes of which Respondent was convicted, as  
21 alleged in Paragraphs III and IV, constitute cause for denial of  
22 Respondent's application for a real estate license under Sections  
23 480(a) and 10177(b) of the California Business and Professions  
24 Code.

25 WHEREFORE, the Complainant prays that the above-  
26 entitled matter be set for hearing and, upon proof of the charges  
27 contained herein, that the Commissioner refuse to authorize the

1 issuance of, and deny the issuance of, a real estate salesperson  
2 license to Respondent, and for such other and further relief as  
3 may be proper under other provisions of law.

4  
5  
6   
7 CHARLES KOENIG  
Deputy Real Estate Commissioner

8 Dated at Sacramento, California,  
9 this 31<sup>st</sup> day of August, 2005.