

FILED

JUL 29 2010

DEPARTMENT OF REAL ESTATE

By *A. Zini*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of

MINERVA YANELI PANIAGUA,

Respondent.

No. H-4388 SAC

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 4, 2006, in Case No. H-4388 SAC, a Decision was rendered revoking the real estate salesperson license of Respondent effective April 26, 2006, 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 April 26, 2006, and Respondent operated as a restricted licensee until Respondent's license expired on April 25, 2010.

On December 5, 2008, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the

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

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for  
4 reinstatement is granted and that a real estate salesperson license be issued to Respondent if  
5 Respondent satisfies the following requirements:

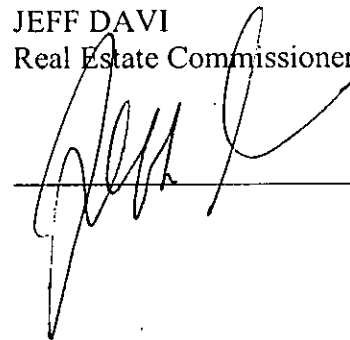
6 1. Submits a completed application and pays the fee for a real estate  
7 salesperson license within the 12 month period following the date of this Order; and

8 2. Submits proof that Respondent has completed the continuing education  
9 requirements for renewal of the license sought. The continuing education courses must be  
10 completed either (i) within the 12 month period preceding the filing of the completed  
11 application, or (ii) within the 12 month period following the date of this Order.

12 This Order shall become effective immediately.

13 DATED: 7-14-2000

14 JEFF DAVI  
15 Real Estate Commissioner

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**

APR 06 2006

DEPARTMENT OF REAL ESTATE  
By *[Signature]*

\* \* \*

In the Matter of the Accusation of )  
MINERVA YANELI PANIAGUA, ) NO. H-4388 SAC  
Respondent. ) OAH NO. N-2005120262  
\_\_\_\_\_ )

DECISION

The Proposed Decision dated February 16, 2006, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon  
on April 26, 2006.

IT IS SO ORDERED 4-4, 2006.

JEFF DAVI  
Real Estate Commissioner

*[Signature]*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:  
  
MINERVA YANELI PANIAGUA,  
  
Respondent.

Case No. H-4388 SAC  
  
OAH NO. N2005120262

PROPOSED DECISION

Administrative Law Judge John A. Thawley, State of California, Office of Administrative Hearings, heard this matter on January 23, 2006, in Sacramento, California.

Daniel E. Kehew, Counsel, Department of Real Estate (Department), represented complainant, Deputy Real Estate Commissioner Charles Koenig.

Edgardo Gonzalez, attorney at law, represented Minerva Yaneli Paniagua (respondent), who attended.

On January 23, 2006, the matter was submitted for decision.

FACTUAL FINDINGS

1. On November 4, 2005, complainant, acting in his official capacity, filed the Accusation with the Department.
2. Respondent was granted a conditional real estate salesperson license on June 19, 2004. The conditional portion of her license was to expire on December 19, 2005; her license expiration date is June 18, 2008.
3. On April 7, 2005, in the San Joaquin County Superior Court, respondent was convicted upon her plea of guilty under Penal Code section 484, subdivision (a) (misdemeanor petty theft/shoplifting). Respondent was placed on probation for three years (until April 2008), ordered to pay restitution and perform 16 hours of community service, and fined/assessed about \$140. Since then, respondent has completed the community service and paid the restitution and the fines. She remains on probation until April 2008.

4. The facts and circumstances of this offense are that, on February 12, 2005, a loss prevention officer (LPO) at Mervyn's department store saw respondent put three items of costume jewelry into her purse. The LPO saw respondent go to a cashier and pay for other items. The LPO stopped respondent when she left the store, told her what he had seen, and asked her to accompany him to the office. The LPO detained respondent in the office, recovered the three pieces of jewelry, valued at a total of \$62, and called the police. After being advised of her constitutional rights, respondent apologized. She told the officer that she had been feeling bad and decided to steal the jewelry to help herself feel better. She admitted stealing only one other time, about two months before. Respondent was arrested.

5. During respondent's testimony, she was very emotional and cried frequently. She stated that near the time of the theft, she and her boyfriend ended their long-term relationship and she felt alone. She was also facing a serious health issue without health insurance. While shopping at Mervyn's just before Valentine's Day, she put some costume jewelry into her purse intending not to pay for it. Her only explanation was that it was "all a blur" and she later recognized that she was being "selfish." Respondent's only other theft involved a magazine that she inadvertently failed to pay for at a checkout counter and, upon discovering that fact, did not return the magazine or pay for it.

6. Respondent's grandparents raised her because her mother was only 16 years old when respondent was born. She worked for Prudential Realty during high school and for about 16 months after her graduation in 2003, during which time she got her real estate license. Michelle Fajardo, a former colleague who knew about the theft, wrote a character reference letter noting that respondent took time to help Fajardo learn the real estate business. Fajardo described respondent as a "good person" whom she trusted and respected. Respondent submitted character reference letters from several other people who knew about respondent's conviction. The letter writers consistently voiced their support of, as well as their confidence and trust in, respondent.

7. Joellen Chappell testified on respondent's behalf. Chappell, a licensed real estate agent since 1977 and the sales manager at Century 21, M&M and Associates (Century 21, where Larry Matos was the Broker of Record) recruited respondent. Chappell is respondent's direct supervisor, and respondent is the youngest agent with whom Chappell has ever worked. She had tried for months to recruit respondent, because she knew respondent had a good reputation and was successful. Chappell arranged a meeting with Matos where respondent told them about her conviction. Chappell viewed the conviction as an aberration that did not prevent respondent from being hired. There have been "absolutely no complaints" about respondent, who is trusted by her clients and who continues to work at Century 21, where the business is based only on client referrals. If respondent retains her license, even if restricted, her employment with Century 21 is assured.

8. Respondent made numerous changes to her life since the theft. Specifically, she has (1) a mentor at Century 21 named Glenn Race, (2) a new group of friends, (3) a life coach, which includes several events each year and tele-classes on subjects like integrity and self-discipline, (4) a new boyfriend, Nathan Ruiz, a member of her real estate team who

introduced her to church, where she attends every Sunday and takes classes, and (5) membership at a gym, and in the Venture Club, a community service organization that meets monthly (beyond respondent's probation requirements) and holds fundraisers for charities such as the "Ray of Hope" or Hospice of San Joaquin. Respondent testified that she would never steal again.

9. Kellee Dankiewicz, a real estate sales agent for Prudential Realty, testified on respondent's behalf. She met respondent through the Venture Club about three years ago. As the club treasurer, she trusted respondent and was impressed that respondent joined a community service organization at only 18 years of age. Also, respondent was hard working and "very helpful" at Prudential, even though the other agents were competitors. Dankiewicz was surprised when respondent told her about her crime a few days before the hearing. But she did not think that respondent would do such a thing again.

### LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 490, subdivision (a), a license may be suspended or revoked if a licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued. California Code of Regulations, title 10, section 2910 sets forth the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee, and provides, in relevant part:

(a) When considering whether a license should be . . . suspended or revoked on the basis of the conviction of a crime . . . the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

- (1) The fraudulent taking, obtaining, appropriating or retaining of . . . property belonging to another person. [¶] . . . [¶]
- (4) The employment of . . . deceit, [or] falsehood . . . to achieve an end. [¶] . . . [¶]
- (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator . . . .

In *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, the court noted:

Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If [the] offenses reflect unfavorably on his honesty, it may be said that he lacks the necessary qualifications to become a real estate salesperson. [Citation.] The Legislature intended to insure that real estate brokers and salespersons will

be honest, truthful and worthy of the fiduciary responsibilities which they will bear.

(*Id.* at p. 402, citing *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176-177; *Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.)

2. Respondent was convicted of the misdemeanor offense of petty theft/shoplifting, which conviction is factually and by statute substantially related to the qualifications, functions, or duties of a real estate licensee. Therefore, respondent's conviction establishes cause to suspend or revoke respondent's license under Business and Professions Code section 490.

3. California Code of Regulations, title 10, section 2912, states, in relevant part:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by a licensee.

(a) The passage of not less than two years since the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts 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 licensee. [¶] . . . [¶]

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license. [¶]

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction . . . in question. [¶]

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

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

(m) 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 . . . friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns. [¶] . . . [¶]

(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.

3. The following factors show respondent's efforts at rehabilitation: (1) she has paid all of the fines and restitution, and has performed the community service portion of her sentence; (2) she has a mentor at work, a life coach, a new boyfriend, and close, sharing friendships; (3) she has enthusiastically participated in the "By Referral Only" program at work; (4) she participates in tele-classes through her life-coach, and other educational experiences as part of the "By Referral Only" program; (5) she regularly attends church, and she is taking church classes to deepen her understanding of and participation in the church; (6) she is a member of the Venture Club, which raises money for charitable organizations; (7) she testified about her understanding of her crime, and her change in attitude and outlook since she committed the crime; (8) Chappell, her supervisor, testified about the satisfaction of respondent's clients, as well as respondent's continued employment with Century 21; (9) Dankiewicz provided evidence of respondent's change in attitude and outlook from the time of respondent's crime, as well as Dankiewicz's trust of respondent; and (10) respondent has not suffered any other convictions.

4. Respondent's conviction occurred just last year. Thus, it is difficult to judge respondent's rehabilitation, in that she is only about one-third of the way through her probation. But she presented considerable evidence of rehabilitation (see Legal Conclusion 3). Accordingly, it would not be contrary to the public interest or welfare to allow respondent to continue to work as a real estate salesperson, but on a restricted license.

#### ORDER

All licenses and licensing rights of respondent Minerva Yaneli Paniagua under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code, section 10156.5, if respondent applies for such restricted license and pays to the Department the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or the restricted license conditions.

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


4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a Department-approved form which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license;  
and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Dated: February 16<sup>th</sup>, 2006

  
JOHN A. THAWLEY  
Administrative Law Judge  
Office of Administrative Hearings

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2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0425 (Direct)

FILED  
NOV - 4 2005

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of )  
12 ) H-4388 SAC  
13 MINERVA YANELI PANIAGUA, )  
14 ) ACCUSATION  
Respondent. )

15 The Complainant, CHARLES W. KOENIG, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 Accusation against MINERVA YANELI PANIAGUA (hereinafter  
18 "Respondent") is informed and alleges as follows:

19 I

20 Respondent is presently licensed and/or has license  
21 rights under the Real Estate Law, Part 1 of Division 4 of the  
22 Business and Professions Code (hereinafter "the Code") as a real  
23 estate salesperson.

24 II

25 Complainant, CHARLES W. KOENIG, a Deputy Real Estate  
26 Commissioner of the State of California, makes this Accusation  
27 against Respondent in his official capacity.

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III

On or about April 7, 2005, in the Superior Court of the State of California, County of San Joaquin, Respondent was convicted of the crime of Theft of Retail Merchandise in violation of Penal Code Section 484(a), a misdemeanor and crime involving moral turpitude that bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (hereinafter "Regulations"), to the qualifications, functions, or duties of a real estate licensee.

IV

Respondent's conviction, described in Paragraph III above, constitutes cause under Sections 490 and 10177(b) of the Code for suspension or revocation of Respondent's license under the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a Decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Code, and for such other and further relief as may be proper under provisions of law.

  
CHARLES W. KOENIG  
Deputy Real Estate Commissioner

Dated at Sacramento, California  
this 11<sup>th</sup> day of October, 2005.