

FILED

BEFORE THE BUREAU OF REAL ESTATE

APR 22 2014

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By

In the Matter of the Accusation of

SHAHLA SALAH-ISFAHANI,

Respondent.

) CalBRE No. H-04472 SD
)
) OAH No. 2013040497
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DECISION

The Proposed Decision dated March 25, 2014, of the Administrative Law Judge, Mary-Margaret Anderson, 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
MAY 13 2014.

IT IS SO ORDERED

4/19/2014
REAL ESTATE COMMISSIONER

Wayne Bell
WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SHAHLA SALAH-ISFAHANI,

Respondent.

Case No. H-04472 SD

OAH No. 2013040497

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on March 17, 2014, in Los Angeles, California.

Lisette Garcia, Real Estate Counsel, represented Complainant Sylvia Yrigollen, a Deputy Real Estate Commissioner.

Frank M. Buda, Attorney at Law, represented Respondent Shahla Salah-Isfahani.

The record closed on March 17, 2014.

FACTUAL FINDINGS

1. Complainant Sylvia Yrigollen filed the Accusation in her official capacity as a Deputy Real Estate Commissioner for the Department of Real Estate (now the Bureau of Real Estate (Bureau), State of California.

2. On September 7, 1990, the Department licensed Shahla Salah-Isfahani (Respondent) as a real estate salesperson. On July 9, 2012, she was licensed as a real estate broker. The license will expire July 8, 2016, unless renewed.

Failure to disclose conviction on applications

3. Respondent obtained her real estate broker's license by submitting an application to the Department on July 2, 2012. Question No. 19 on the application states:

**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.**

Respondent checked the box marked "No" next to this question, and failed to disclose the following criminal conviction.

4. On January 9, 1998, in the San Diego Superior Court, Respondent was convicted by her pleas of guilty of felony violations of Welfare and Institutions Code sections 10980, subdivision (c)(2) (aid by misrepresentation-in excess of \$7,538) and 14014 (false statement to receive health care). Respondent was sentenced on July 27, 2010, and at that time the Court reduced the felonies to misdemeanors. She was placed on probation for three years pursuant to standard conditions and the requirement that she complete 36 days of community service. Respondent was also ordered to pay restitution of \$8,888.51.

5. On July 27, 2010, Respondent's motion to dismiss pursuant to Penal Code section 1203.4 was granted and the case was dismissed. Such an order does not, however, relieve the recipient from the obligation to disclose the conviction in response to a direct question on any application for licensure by a state agency. The order states this requirement on its face.

6. Respondent also failed to disclose the 1998 conviction on her June 29, 1999, salesperson's renewal application.

Respondent's evidence

7. Respondent was nervous and emotional during her testimony and had difficulty describing her real estate career, but related the following information. Although she was initially licensed in 1990, Respondent did not work in the real estate field until approximately 1999, when she began to work as a loan officer. In 2007, she began to work as a sales agent, in affiliation with USA Realty and Loan in San Diego. Respondent believed that this would be a better position for her at the time, given the downturn in the real estate market, and her family problems. She stated, however, that she has handled only two transactions as a sales agent.

8. Respondent described a challenging family life beginning in 1995, when her brother died. Respondent became responsible for her sister-in-law and their children, in addition to her own two children. She is recently divorced, but has been separated from her husband for many years. Respondent's mother became ill with cancer and had surgery in 2009. She lived with Respondent until 2013, when she relocated to a care facility. Caring for her children, now ages 24 and 32, as a single parent, and her mother, proved very difficult emotionally and financially for Respondent.

9. Respondent nonetheless took real estate classes and the required continuing real estate education classes over the years. She submitted documentation showing that she completed 45 hours of continuing education in real estate between March 22 and April 12, 2012. She also obtained a notary public license.

10. As regards her criminal convictions for welfare fraud, Respondent testified that all she recalls of court is going to "this big huge place." When she said she did not have a lawyer, they assigned her a lawyer, who told her to just plead guilty and it would be "okay." She was told she would have to do community work and pay what she owed, and she did so, utilizing installment payments. The case arose when she was on assistance and obtained a part-time job teaching English as a second language. She did not report that income, and later "understood that I was supposed to."

11. In 2001, Respondent applied to have her 1998 convictions expunged in connection with an application for an "MLS license." She did this by herself, although she "had no idea what expungement was." She "was talking to someone who advised me to go find out. And the court clerk told me that it means that you file something and they take it off your record." When she had not heard back after the filing, she went back to court and gave her telephone number. Subsequently a man called and said "It is finished; it is as if it never existed." She does not remember receiving any paperwork "but probably did."

12. As regards her real estate license applications, Respondent said that she did not read the applications carefully. She also did not think she had to disclose her convictions "or even think about it." This was because the clerk told her that it was "like it never existed." Respondent asserts that she regrets this now, but that she "didn't even know it was such a big deal." She also said that she did not "even know it was a conviction." She did not go to prison and "it wasn't anything."

13. Nonetheless, Respondent asserts that she has changed since that time "by improving myself and by not taking assistance from any government agencies." Her conviction "wasn't a malicious thing that I did; it was a mistake, and of course I believe it is wrong. Of course I wouldn't do something like that again."

14. Respondent is Iranian-American and is involved in the Persian Community Center (PCC). She has served the PCC in various capacities and is presently the Treasurer. It is a social organization, a charity, and it also has a school. Shagnayegh Hanson is currently the President of the PCC. In a letter dated December 5, 2012, Hanson confirmed that Respondent has been a board member for approximately 14 years and served in various capacities, including as president. She also wrote that Respondent is a role model for her, because of "her integrity, ability to lead and succeed, and her warm personality." Hanson is unaware of Respondent's criminal convictions or this action.

15. Respondent represented that she has paid the restitution ordered by the criminal court in full. She incurred a tax lien in 2005 that now totals approximately \$7,000.

She pays installments of \$445 per month. The funds come from money her son deposits in her account.

16. Respondent has not told anyone about this action, and only her son knows about her criminal convictions. She feels great embarrassment about the convictions, and is remorseful. Respondent's son wrote a very strong letter describing Respondent as a caring and devoted mother, and praising her care for his grandmother.

17. Respondent presented an additional two letters of reference. Neither of the authors, both former clients, is aware of her legal situation. Steve Rabiee wrote that he has known Respondent for over ten years. She apparently served as his mortgage loan broker. In an undated letter, Rabiee praised Respondent's "highest ethical and professional manner." Robert Chan wrote on March 8, 2014, that he met Respondent in 2010 at a nursing facility where Respondent's mother and his friend were residing. When his friend passed away, he "accepted [Respondent's] offer to be the realtor agent to sell the La Jolla property." Chan was the executor for his friend, and he described Respondent's work ethic as "beyond reproach." Chan was very pleased with Respondent's services.

Ultimate finding

18. The evidence demonstrated that Respondent's failure to disclose her criminal conviction on her 2012 renewal application was knowing and willful, and her personal and financial circumstances do not explain or excuse her lack of candor. Respondent obtained the 1203.4 order herself. Both the expungement order and the real estate application form clearly state that an expungement does not relieve an applicant for a state license from disclosure of the expunged conviction. Her reliance on a telephone call concerning the effect of the order was not reasonable. Respondent's testimony that she was unaware that she had suffered a criminal conviction was also not credible. And her failure to disclose her conviction on her 1999 application, when she was still on criminal probation, is further evidence that her failure to reveal it in 2012 was a knowing failure.

Cost recovery

19. The evidence provided by the Bureau demonstrated that it has incurred \$1,102.98 in costs of investigation and \$890 in costs of enforcement of this case. The total amount is \$1,992.98 and is found to be a reasonable amount.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 498 and 10177, subdivision (a), together provide that a real estate license may be disciplined where a "licensee secured the license by fraud, deceit, or knowing representation of a material fact or knowingly omitted to state a material fact." Respondent knowingly omitted a material fact on her application for

renewal by falsely denying any criminal convictions. Cause for license discipline therefore exists by reason of the matters set forth in Findings 3 through 5 and 18.

2. In California Code of Regulations, title 10, section 2912, the Bureau has established criteria to guide the analysis of whether a licensee is sufficiently rehabilitated to be safe to practice as a real estate licensee. The first criterion is passage of time; that is, not less than two years since the conviction or act. (Cal. Code Regs., tit. 10, § 2912, subd. (a).) Although many years have passed since the underlying conviction, Respondent's failure to disclose it occurred just two years ago. In addition, she did not present significant evidence concerning the other criteria. Change of attitude (Cal. Code Regs., tit. 10, § 2912, subd. (m)) has been identified as the most important criterion. Respondent's testimony revealed that her attitude has not changed; she both denied knowing she had criminal convictions and sought to excuse them by referencing her personal problems.

3. The purpose of the licensing scheme regarding real estate brokers is protection of the public. Real estate brokers often act as fiduciaries and utilize trust accounts, and it is essential that they be honest, trustworthy, and conscientiously follow the laws governing the practice of real estate. They owe a duty of honest conduct not only to their clients, but also to lenders, other parties, and the public at large. Real estate is a highly regulated profession, and Respondent's actions evidence a failure to understand the importance of official documents signed under penalty of perjury; documents relied on by others to be accurate and complete. Respondent filled out two applications for licensure signed under penalty of perjury wherein she denied having any criminal convictions. In additional aggravation, her conviction was for welfare fraud, which also involves misrepresenting facts to a government agency. Respondent's actions give serious cause for concern about her ability and willingness to comply with the duties and responsibilities of a real estate broker or of a real estate salesperson. There was little evidence that she understands the importance of honest conduct, and little evidence of meaningful rehabilitation. The public interest therefore requires revocation of her licenses.

Costs

4. Pursuant to Business and Professions Code section 10106, a licensee found to have violated the Real Estate Law may be required to pay the reasonable costs of the investigation and enforcement of a case. Section 10106, subdivision (c), provides, in pertinent part:

A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs the costs shall include the amount of investigative and enforcement costs up to the date of the hearing

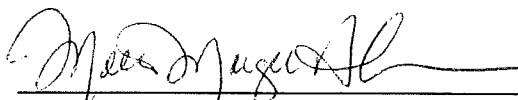
As set forth in Finding 19, the reasonable costs of investigation and enforcement in this matter are \$1,992.98.

5. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court held that licensing boards must exercise their discretion in fashioning cost awards to ensure that they do not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. The court set forth factors to be considered, which include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. None of these factors militate in Respondent's favor and the total amount is reasonable. Respondent shall be ordered to pay \$1,992.98.

ORDER

1. Respondent Shahla Salah-Isfahani's real estate broker license is revoked.
2. Respondent Shahla Salah-Isfahani's real estate salesperson license is revoked.
3. Respondent shall pay \$1,992.98 to the Bureau of Real Estate for the costs of investigation and enforcement of this case.

DATED: March 25, 2014



MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings