

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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FILED

JAN 25 2017

BUREAU OF REAL ESTATE

By *AG Solari*

In the Matter of the Application of

CLORETTA TRINETTE BANKS,

Respondent.

} CalBRE No. H-04837 SD

} OAH No. 2016100262

DECISION

The Proposed Decision dated December 9, 2016, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on FEB 14 2017.

IT IS SO ORDERED 1/18/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

A handwritten signature in cursive script, appearing to read "Daniel J. Sandri", is written over a horizontal line.

By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Regarding:

CLORETTA TRINETTE BANKS,

Respondent.

Case No. H-04837 SD

OAH No. 2016100262

PROPOSED DECISION

Administrative Law Judge Debra D. Nye-Perkins, State of California, Office of Administrative Hearings, heard this matter on November 10, 2016, in San Diego, California.

James R. Peel, Counsel, Bureau of Real Estate, represented complainant.

Respondent, Cloretta Trinette Banks, represented herself.

The case was submitted for decision on November 10, 2016.

SUMMARY

Respondent applied for a real estate salesperson license on February 24, 2016. Complainant denied the application based on respondent's record of convictions. Respondent timely appealed. At hearing, respondent presented substantial evidence of rehabilitation and mitigation. Respondent met her burden of establishing that it would not present a risk of harm to the public if she were granted a license with appropriate restrictions.

FACTUAL FINDINGS

1. Respondent applied to the bureau for a real estate salesperson license on February 24, 2016. Complainant Veronica Kilpatrick, Supervising Special Investigator, filed the Statement of Issues in her official capacity on September 14, 2016. The Statement of Issues alleged a history of criminal convictions as grounds for denial of respondent's application.

Criminal Conviction History

2. On March 28, 2005, respondent was convicted in the Superior Court of California, County of San Diego, in Case Number CS 191136, on her plea of guilty, to a misdemeanor violation of Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance, specifically methamphetamine).

The offense date was January 29, 2005.¹ An officer with the Chula Vista Police Department was in a marked patrol car on routine patrol when he observed that respondent's vehicle did not have a license plate. The officer conducted a traffic stop and approached the vehicle. The officer observed a driver and three passengers in the vehicle. Respondent was one of the passengers. The officer observed that the driver of the vehicle did not have a valid driver's license, and he suspected that the vehicle was stolen. After other officers arrived on the scene, the officers asked respondent to step out of the vehicle and she agreed to allow a search of her person. When respondent exited the vehicle, officers observed a glass cylindrical pipe on the floorboard with a white powdery residue inside. The officer recognized the pipe as one commonly used to smoke methamphetamine. Respondent denied that the pipe was hers. Respondent agreed to allow officers to search her purse. In respondent's purse the officers found a black case with a Velcro closure and inside the case a small black weighing scale and a clear plastic baggie with a whitish crystalline substance inside. The officer's determined that the substance in the plastic baggie was methamphetamine based upon testing. Respondent was arrested for possession of a controlled substance and drug paraphernalia. After her arrest, respondent admitted to officers that she last consumed methamphetamine five days prior to her arrest, she used methamphetamine once every three to four weeks, and she usually snorted it.

3. On April 26, 2006, respondent was convicted in the Superior Court of California, County of San Diego, in Case Number CS 197223, on her plea of guilty to a misdemeanor violation of Penal Code section 470, subdivision (d) (forgery of checks, money order, traveler's checks, etc.) The court placed respondent on formal probation for three years, ordered her to complete a drug treatment program, and ordered her to pay fines, fees, restitution and costs. Respondent successfully completed her probation, drug treatment program, and timely paid all fines, fees, restitution and costs.

The offense date was October 10, 2005. The circumstances of the offense were obtained from a police report received under *Lake, supra*. At approximately 5:00 a.m. on October 10, 2005, officers with the Chula Vista Police Department arrived at a home to investigate a reported domestic violence incident from an anonymous caller who reported

¹ These factual findings are based in part on information included in the police reports received under *Lake v. Reed* (1997) 16 Cal.4th 448, which held that a law enforcement officer's report is admissible, and that portions of the report may be used without other evidence to support a finding of fact in an administrative proceeding over a hearsay objection, including the officer's observations and the party's admissions. (*Id.*, at 461-462, 464.)

that a man had been hitting a woman outside of a garage at the home. The caller observed the man and woman go into the garage and not come out. After officers arrived at the home, they knocked on the door of the garage and attempted to enter the garage. A woman unlocked the door and allowed the officers into the garage. Officers asked the woman to step out of the garage and looked into the structure. Officers observed three other individuals lying on the floor of the garage and one of those individuals was respondent. The officers placed all four individuals in handcuffs and began their investigation. Officers interviewed each of the four individuals. The first was a male who informed the officers that he had been in a verbal altercation with respondent, but that he did not hit her. The officers determined that the male was on probation for a drug violation and had a Fourth Amendment waiver. The male informed the officers that he lived in the home and the workshop in the garage was his, but the house belonged to his sister.

Officers searched the garage and found counterfeit U.S. currency and a computer with U.S. currency files for use in counterfeiting the currency in various denominations. The officers also found a purse in the garage containing a small glass smoking device used to smoke methamphetamine, as well as four baggies containing methamphetamine. The purse also contained a wallet with a driver's license belonging to respondent. Respondent denied ownership of the purse or its contents and claimed that the purse belonged to another person not present, and respondent said she had put her wallet into the purse because she had nowhere else to put it. The officers also found numerous checks in a manila envelope that appeared to have been created fraudulently. Many of the checks had respondent's name on them. Officers also found a computer containing files and programs for creating checks, as well as for creating fraudulent ID cards and driver's licenses, as well as for creating counterfeit currency. The officer's also found numerous fraudulent ID cards and driver's licenses, many of which appeared to be in the process of being altered.

Application Process

4. On February 24, 2016, respondent completed her Real Estate Salesperson License Application (Application). The Application requested disclosure of all convictions. Respondent disclosed only one of her convictions, her October 2005 conviction for violation of Penal Code section 470, subdivision (d), forgery of checks, money order, traveler's checks, etc., a misdemeanor. Respondent failed to disclose her March 2005 conviction for possession of a controlled substance. Respondent's failure to disclose her March 2005 conviction was not alleged as a basis of denial of her application in the statement of issues.

Respondent's Testimony and Evidence

5. Respondent is a 37 year-old mother of a nine year-old boy. She currently works in various part-time jobs, including passing out flyers for a real estate agent and teaching fitness classes. She stated that she obtained her certifications to teach Zumba and Turbo-Kick classes in 2012. She also has a certification to teach spin classes. In May 2016 she graduated from Southwestern College with a 3.5 GPA and Associate's degrees in

Sociology and Communications. Respondent is also the director or Chair of the Parent and Teacher's Association (PTA) for her son's school.

6. Respondent testified that during the time of both of her 2005 convictions, she was taking drugs and was in a dark place in her life. Respondent stated that she takes full responsibility for her actions and acknowledges her mistakes. At the time of both of her convictions, she was heavily involved in drug use, hanging out with "bad people," and was not in a "good state of mind." She stated that during that time she had no job, was not going to school and had no desire to better herself. Respondent's mother died in 2005, which caused great personal difficulty for respondent.

7. Respondent testified that she used methamphetamine for about three to four years from 2002 or 2003 until 2005, when she was convicted. After her October 2005 conviction the court required her to complete a drug rehabilitation program, which she successfully completed in 2008. She stated that this was a drug treatment program that lasted 11 months beginning sometime in 2007. Respondent stated that the program required random drug testing and she never received a positive test during her treatment. She attended the program five days per week for the first three months, then the program tapered to four days a week, then three days a week, and finally two days a week until completion. Respondent stated that she has not taken any controlled substances since her conviction in October 2005.

According to respondent, the birth of her son in 2007 was a turning point in her life because she knew that she wanted a better life for her son and herself. She became pregnant in 2006 after her conviction. Respondent began attending Cornerstone church in San Diego and developed a support system from the church. In an attempt to change her life, respondent cut off all communications with the "bad people" with whom she had previously associated. She developed a relationship through the church with a woman named Patricia Chapman, who respondent stated helped her mature, grow and change to take responsibility for "the things I have done" and be honest with herself. Respondent stated that Ms. Chapman particularly helped her to change her life since her mother had died and was no longer a form of support. Respondent has continuously attended the church for the past nine years. Respondent stated that she has a very strong support system at her church.

8. Respondent testified that when she completed her Application, she listed only one of her convictions because she went to the Chula Vista Police Department to obtain her criminal record and was only provided with the 2005 conviction for forgery of checks. Respondent did not understand at the time that her 2005 conviction for the possession of controlled substances was a separate conviction but believed it was the same conviction.

9. Respondent also provided five letters of reference. The first letter was from Patricia Chapman, respondent's close friend from church. Ms. Chapman wrote that she has known respondent for about nine years through the church and is also respondent's property manager at the apartment building where respondent and her son live. She wrote that she knows about respondent's "2005 and 2006" convictions and is impressed by respondent's

dedication to turn her life around and provide for her son. She stated that respondent is reliable, trustworthy, has an excellent work ethic, displays honesty and has a great character. She stated that respondent also has a passion to be a real estate agent.

The second letter was from Monica R.C. Helton, a court referral officer for the Criminal Division of the Superior Court and a member of Cornerstone Church. Ms. Helton wrote that she has known respondent for the past 15 years. She wrote that she has "personally witnessed [respondent] turn her life completely around over the years." She also wrote that she has full knowledge of respondent's "2005 and 2006" convictions. The letter further stated that respondent has shown multiple times that she is determined to succeed in her life and has obtained two degrees and passed the real estate exam. Ms. Helton wrote that respondent is professional, kind, hardworking, and a great friend.

The third letter was from Ryan Doke, a substance abuse counselor and member of Cornerstone Church. Ms. Doke wrote that she has known respondent for nine years and has witnessed her professional and emotional growth during that time. Ms. Doke wrote that she knows about respondent's "convictions in 2005 and 2006." She wrote that respondent has had many challenges but keeps moving forward. Ms. Doke wrote that respondent has a great deal of integrity and is very diligent in trying to improve her son's life.

The fourth letter was from Cristina Saldana, another Cornerstone church member. Ms. Saldana wrote that she has known respondent since 2007 and knows about her two convictions. She wrote that respondent has moved on from her convictions and at the time they met respondent was "ready to change her life around and raise her son." Ms. Saldana described respondent as a responsible, hardworking, and dedicated to making her son's life better.

The final letter was from Catherine Naranjo, who wrote that she has known respondent for 10 years. Ms. Naranjo wrote that she knows about respondent's convictions and has seen her overcome them. Ms. Naranjo stated that respondent is a hardworking mother and professional who has "made critical changes in her life" to improve it.

Evaluation

10. Considering all of the facts, respondent established by a preponderance of the evidence that she is rehabilitated. Indeed, respondent produced substantial evidence of rehabilitation to justify issuance of a restricted license. Respondent was candid about her criminal history and the impact it had on her life. She has worked hard to overcome her criminal history and disconnect herself from the people she associated with during the time she used methamphetamine in an effort to change her life. Since then, respondent has made major, positive changes in her personal and professional life. Obtaining two degrees while working clearly demonstrates a strong work ethic and goal-oriented focus. She presented as honest, humble, and resolved in her mission to live ethically and work in the real estate industry. Her attitude and efforts are commendable. However, respondent's convictions were serious in nature, involved fraudulent checks, and the use of controlled substances.

Accordingly, on balance, the evidence shows that an unrestricted license would not provide sufficient protection to the public. However, it would not present a risk to the public to grant respondent the real estate salesperson license she seeks, with appropriate restrictions.

LEGAL CONCLUSIONS

Applicable Laws

1. A board may deny a license on the grounds that the applicant has been convicted of a crime. A conviction within the meaning of this section includes a plea or verdict of guilty or a conviction following a plea of nolo contendere. A 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. (Bus. & Prof. Code, § 480, subd. (a)(1), and §475, subd. (a)(2).)

2. Business and Professions Code section 10177, subdivision (b), authorizes the bureau to deny the issuance of a license to an applicant who has 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.

3. A crime or act shall be deemed to be substantially related to the qualifications, functions, or duties of a licensee of the bureau within the meaning of Business and Professions Code sections 480 and 490, if it involves: “[c]ounterfeiting, forging or altering of an instrument or the uttering of a false statement” or “[c]onduct which demonstrates a pattern of repeated and willful disregard of law.” (Cal. Code Regs., tit. 10, § 2910, subds. (2) and (10).) Accordingly, respondent’s 2005 conviction for forgery of checks, money order, traveler’s checks, etc. and her 2005 conviction for possession of a controlled substance are substantially related to the functions or duties of a real estate salesperson.

4. The duties of a real estate salesperson include “sell[ing], offer[ing] to sell, buy[ing] or offer[ing] to buy, [and] solicit[ing] prospective sellers or purchasers of . . . real property.” (Bus. & Prof. Code, §10131, subd. (a).) The duties of a real estate salesperson require honesty and trust when dealing with clients or potential clients and related real property. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

5. California Code of Regulations, title 10, section 2910, subdivision (c), states, “[i]f the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department,² the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.”

² In 2013, the Department of Real Estate became known as the Bureau of Real Estate. The Bureau of Real Estate is within the Department of Consumer Affairs.

6. Business and Professions Code section 10156.5 authorizes the bureau to issue a restricted license to a person who is applying for a license and has met the examination and experience requirements. Business and Professions Code section 10156.6 provides that any such restricted license issued in the public interest may be restricted by term; to employment by a particular real estate broker, if a sales person; by conditions to be observed in the exercise of the privileges granted; or if a salesperson licensee or applicant has not complied with additional education requirements pursuant to section 10153.4 within 18 months after issuance of a license. A restricted license issued pursuant to Business and Professions Code section 10156.5 does not confer any property right in the privileges to be exercised thereunder and the holder of a restricted license has no right to renewal of the license.

Cause for Denial

7. Respondent's 2005 conviction for forgery of checks, money order, traveler's checks, etc. and her 2005 conviction for possession of a controlled substance are substantially related to the qualifications, functions, and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(2) and (a)(10).

8. Cause for denial of respondent's application for a real estate salesperson license exists pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), in conjunction with California Code of Regulations, title 10, section 2910, subdivisions (a)(2) and (a)(10), in that respondent suffered convictions for possession of controlled substances and forgery of checks, money order, traveler's checks, etc.

Rehabilitation

9. The Bureau has developed guidelines for use in evaluating the rehabilitation of an applicant for a license, which are set forth in California Code of Regulations, title 10, section 2911, subdivisions (a) through (n). The context in which qualifying crimes or acts were committed goes to the question of the weight to be accorded the offending conduct in considering the disciplinary action to be taken. (Cal. Code Regs., tit. 10, § 2910, subd. (c).)

10. Considering the guidelines under California Code of Regulations, title 10, section 2910, respondent has demonstrated that she is sufficiently rehabilitated to grant her license application with appropriate restrictions to protect the public. Respondent's first offense related to respondent's possession of a controlled substance occurred in January 2005, over 10 years ago. Her most recent offense for forgery of checks occurred in 2005, also over 10 years ago. She has taken the initiative to disassociate herself from the people she knew during that time in an effort to change her life and has not used controlled substances since her most recent conviction. She also resolved to pursue a professional career, obtained two college degrees, and passed the real estate salesperson exam. Since 2007, she has demonstrated consistent and sustained advancement in her life. Overall, her efforts are commendable, and she is a proper candidate for a real estate salesperson license with certain restrictions in place to ensure public protection.

ORDER

The application of respondent, Cloretta Trinette Banks, for a real estate salesperson license is denied; 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 said Code:

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

(a) The conviction of respondent (including a plea of nolo contendere) 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 two 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 Bureau of Real Estate which shall certify as follows:

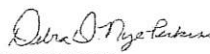
(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

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

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

5. Respondent shall completely abstain from the use or consumption of controlled substances without a prescription. Respondent's failure to completely abstain from the use or consumption of controlled substances without a prescription shall constitute a violation of the conditions under which the restricted license is issued.

Dated: December 9, 2016

DocuSigned by:

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DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings