

FILED

JUL 21 2010

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	No. H-5168 SAC
	)	
MALAHAT MICHELLE AMIN,	)	
	)	
Respondent.	)	
	)	

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

(Continuing Education)

TO: MALAHAT MICHELLE AMIN ("Respondent"):

On September 21, 2009, a restricted real estate broker license was issued by the Department of Real Estate to Respondent on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Decision effective August 3, 2009, in Case No. H-5168 SAC. This Decision granted the right to the issuance of a restricted real estate broker license subject to the provisions of Section 10156.7 of the Business and Professions Code of the State of California, and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of said Code. Among those terms, conditions and restrictions, the Decision required Respondent, within nine (9) months after August 3, 2009, the effective date of the

1 Decision, to present evidence satisfactory to the Real Estate Commissioner that Respondent has,
2 since the most recent issuance of an original or renewal real estate license, taken and successfully
3 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
4 Law for renewal of a real estate license, and provided that if Respondent failed to satisfy this
5 condition, the Commissioner may order suspension of the restricted license until Respondent
6 satisfy this condition.

7 As of May 3, 2010, Respondent has failed to submit proof satisfactory to the
8 Commissioner of satisfying this condition. The Commissioner has determined that Respondent
9 has failed to satisfy this condition, and as such, that Respondent is in violation of Section
10 10177(k) of the Business and Professions Code.

11 NOW, THEREFORE, IT IS ORDERED under authority of Section 10156.7 of the
12 Business and Professions Code of the State of California that the restricted real estate license
13 heretofore issued to Respondent and the exercise of any privileges thereunder is hereby
14 suspended until such time as Respondent provides proof satisfactory to the Commissioner that
15 Respondent has satisfied the condition, described above, or pending final determination made
16 after hearing (see "Hearing Rights" set forth below).

17 IT IS FURTHER ORDERED that all license certificates and identification cards
18 issued by the Department of Real Estate which are in the possession of Respondent be
19 immediately surrendered by personal delivery or by mailing in the enclosed self-addressed,
20 stamped envelope:

21 DEPARTMENT OF REAL ESTATE
22 ATTN: Flag Section
23 P. O. Box 187000
Sacramento, CA 95818-7000

24 HEARING RIGHTS: You have the right to a hearing to contest the
25 Commissioner's determination that you are in violation of Section 10177(k). If you desire a
26 hearing, you must submit a written request. The request may be in any form, as long as it is in
27 writing and indicates that you want a hearing. Unless a written request for a hearing, signed by

1 or on behalf of you, is delivered or mailed to the Department, Legal Section, at 2201 Broadway,
2 P. O. Box 187007, Sacramento, California 95818-7007, within twenty (20) days after the date
3 that this Order was mailed to or served on you, the Department will not be obligated or required
4 to provide you with a hearing.

5 This Order shall be effective immediately.

6 DATED: 7/14/2010

7 JEFF DAVI
8 Real Estate Commissioner
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

JUL 13 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

In the Matter of the Accusation of

MALAHAT MICHELLE AMIN,

Respondent.

NO. H-5168 SAC

OAH NO. 2009030827

DECISION

The Proposed Decision dated June 3, 2009, 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, but also grants the right to a restricted real estate broker license to respondent.

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 AUG - 3 2009

IT IS SO ORDERED 7-9-09

JEFF DAVI
Real Estate Commissioner

[Signature]

FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

JUL - 8 2009

DEPARTMENT OF REAL ESTATE

By R. Max

In the Matter of the Accusation Against:

Case No. H-5168 SAC

MALAHAT MICHELLE AMIN,

OAH No. 2009030827

Respondent.

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 1, 2009, in Sacramento, California.

Richard K. Uno, Counsel, represented complainant, Joe M. Carrillo, a Deputy Real Estate Commissioner for the Department of Real Estate (department).

Malahat Michelle Amin (respondent) appeared on her own behalf.

Evidence was received, the record was closed and the matter was submitted on June 1, 2009.

FACTUAL FINDINGS

1. At all times relevant herein, respondent was licensed by the department as a real estate broker (License Number B01250996). Respondent's license is active, and has been renewed through October 7, 2012.

2. On February 27, 2009, complainant filed the Accusation in his official capacity. At hearing, the Accusation was amended to read as follows at page 2, paragraph 5, line 1: "The facts alleged in Paragraphs 3 and 4, above, constitute cause under Section 10177(f) and Section 490 of the code for suspension or revocation of Respondent's license under the Real Estate Law." Respondent did not object to this amendment.

3. Respondent timely filed a Notice of Defense to the Accusation, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent

adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

Respondent's Conviction

4. On November 5, 1991, in the Superior Court of California, County of Alameda, in the matter entitled *People of the State of California v. Malahat Amin* (Case No. 355543), respondent, upon a plea of nolo contendere, was convicted of violating Penal Code section 484, subdivision (a), theft, a misdemeanor. Respondent served one day in jail,¹ and was placed on 24 months court probation.

5. Respondent's conviction arose from her conduct on October 25, 1991, when she and a group of high school friends left school at lunch time to "see the Oakland fires." Respondent was 17 years old. According to respondent, they "went to an area where it says no trespassing," and walked around the streets. When respondent and her friends were stopped by the police, one of respondent's friends lied to the police officer about having a home in the burn area.

License Denial by Another State Agency

6. On January 15, 2008, the Secretary of State denied respondent's application for a notary public appointment on the grounds that respondent failed to disclose her November 5, 1991 misdemeanor conviction on her April 12, 2005 application. Respondent was advised of her right to appeal the decision, and opted not to appeal.

7. At hearing, respondent expressed her confusion with the language in the notary public appointment application, as outlined in the Secretary of State's denial letter. The denial letter quoted Item 16 of the application as follows:

Have you ever been convicted by any court of a **FELONY, OR a misdemeanor, OR have you been arrested for an offense for which a trial is pending?***

***ALL CONVICTIONS MUST BE DISCLOSED INCLUDING CONVICTIONS DISMISSED UNDER SECTION 1203.4 OR 1203.4a PENAL CODE.**

[Emphasis original.]

Respondent testified that she understood the question to require disclosure of felony or misdemeanor convictions *for which a trial was pending*, and her 1991 conviction was no longer pending. In addition, respondent testified that she asked one of the ladies at the counter if she should disclose her 1991 conviction, but was told she didn't have to disclose criminal conduct that took place when respondent was a minor. To this day, respondent does

¹ At hearing, respondent testified that she only spent the day at the jail, and did not stay overnight.

does not understand why her notary public appointment was denied, or why the department has instituted this disciplinary action against her. She testified that "now I have to read things 15 times because I interpret it one way and it means something else."

Respondent's Rehabilitation

8. Respondent testified at hearing that the "'no trespassing sign' didn't mean anything to me," and that they "went to be nosey to look at the fires." Respondent does not understand why she was convicted for theft because although the police told her that their presence in the fire zone was considered looting, respondent and her friends "didn't steal anything." Respondent believes that "it was a stupid, bad decision ... at the age of 17," and stated that "we all make mistakes," and "if I could go back and change it, I would, but this has haunted me."

9. Respondent is 35 years old. She has been married for 16 years, and together she and her husband are raising their two children, ages 13 and nine years old. She accepts full responsibility for failing to disclose her 1991 conviction on her application for a notary public appointment. Respondent volunteers "at school and baseball practice," attends mosque once a month, and attends real estate classes "and things here and there that need to be done." Respondent has a medical assistant certificate, but does not work in the field because she enjoys working in real estate sales. Respondent currently shows homes, writes offers, and attends Thursday meetings. If she is "1 percent unsure of a real estate decision," respondent consults other sources, including the department's legal hotline, to obtain the answers.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. The burden of proof in this matter is on complainant to show by clear and convincing evidence to a reasonable certainty that respondent's license should be suspended or revoked. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-56.)

2. A real estate license may be denied based upon a misdemeanor conviction if the conviction was for a crime involving moral turpitude (Bus. & Prof. Code, § 10177, subd. (b))² that is substantially related to the qualifications, functions or duties of a real estate

² Complainant's Accusation acknowledges the burden of proving that the misdemeanor crime for which respondent was convicted is a crime involving moral turpitude. As such, at all times relevant to this matter, Business and Professions Code section 10177, in relevant part, provided:

The commissioner ... may suspend or revoke the license of a real estate licensee, who has done any of the following...: [¶] ... [¶] (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an

licensee (Bus. & Prof. Code, § 490).³ California Code of Regulations, title 10, section 2910, subdivision (a), in relevant part, provides that a crime will meet the substantial relationship requirement when it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

[¶]...[¶]

(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.

[¶]...[¶]

3. Business and Professions Code section 10177, subdivision (f), provides, in pertinent part, that a real estate license may be suspended or revoked if the licensee has:

Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied ... for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license

Cause for Discipline

4. Complainant established cause to suspend or revoke respondent's license and licensing rights by clear and convincing evidence. Respondent's misdemeanor conviction for theft is a crime involving moral turpitude within the meaning of Business and Professions Code sections 490 and 10177, subdivision (b), because it involves honesty and integrity. Crimes which reveal a licensee's honesty involve moral turpitude (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027.) Lack of honesty or integrity demonstrates a lack of moral character and satisfies a finding of unfitness to practice a profession. (*Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 205.) This

order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

Section 10177, subdivision (b), has since been amended.

³ Business and Professions Code section 490, provides, in relevant part, that:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

crime is also 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)(1) and (a)(8). Therefore, legal grounds exist to suspend or revoke respondent's license based on Factual Findings 4 and 5.

5. The Secretary of State's denial of respondent's application for a notary public appointment, based on respondent's failure to disclose the 1991 misdemeanor conviction, constitutes grounds to suspend or revoke respondent's real estate license pursuant to Business and Professions Code section 10177, subdivisions (f) and (j). In denying respondent's application, the Secretary of State provided respondent with the due process protections required by Business and Professions Code section 10177, subdivision (f).

Fitness for Continued Licensure

6. The determination whether a person is presently fit for licensure should be made only after consideration of the conduct of the licensee and consideration of any factors introduced in justification, aggravation or mitigation. "The licensee, of course, should be permitted to introduce evidence of extenuative circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747). The department has set forth criteria for evaluating a licensee's rehabilitation in California Code of Regulations, title 10, section 2912.⁴

⁴ California Code of Regulations, title 10, section 2912, provides:

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 the 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.
- (c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.
- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (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 or convictions in question.
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

7. Reviewing these criteria, it has been 18 years since respondent's conviction, and she has successfully completed the terms and conditions of her probation. The conviction has not been expunged. Respondent appears to have a stable family life and is fulfilling her familial responsibilities. She has not completed formal educational or vocational training courses for economic self-improvement, and does not have significant involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. There was no testimony or other evidence from family members or co-workers regarding respondent's present conduct in light of her past misconduct.

8. A primary goal of the licensing statutes is to protect the public from dishonest licensees. A real estate broker is expected to comply with the real estate laws and behave with honesty and integrity toward the public and clients. As real estate brokers are regularly responsible for collecting, safeguarding, and depositing client funds, and have regular access to the financial information of clients, the department must have confidence that the real estate brokers it licenses will abide by all laws and regulations, and will accurately and truthfully make all disclosures that are required by law. Therefore, it is imperative that they be honest and precise in their handling of client funds and information. Respondent's recent failure to disclose a criminal conviction on her application for a notary public appointment, and her reliance upon the opinions of others who are not charged with the responsibility of determining eligibility for licensure, demonstrate an unwillingness to comply with legal requirements when respondent's self interests are invoked. In addition, respondent's admissions at hearing that she is still confused by the language on the Secretary of State's application and does not understand the basis for complainant's disciplinary action, cast doubt upon the extent to which respondent can be relied upon to provide complete and accurate information to the public and the department in the future. When all the facts are weighed and balanced, the outright suspension or revocation of respondent's license is not warranted. However, issuing respondent a restricted license for four years under appropriate terms and conditions would adequately protect the public interest, safety and welfare.

-
- (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 commission of the criminal acts in question as evidenced by any or all of the following:
 - (1) Testimony of applicant.
 - (2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.
 - (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
 - (4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
 - (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

ORDER

All licenses and licensing rights of respondent Malahat Michelle Amin under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate 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 conditions attaching to the restricted license.

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 four (4) years have elapsed from the effective date of this Decision.

4. 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 the 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: June 3, 2009


REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5
6
7 Telephone: (916) 227-2380

FILED

FEB 27 2009

DEPARTMENT OF REAL ESTATE

By H. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 MALAHAT MICHELLE AMIN,) H-5168 SAC
13 Respondent.) ACCUSATION
14)

15 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of
16 the State of California, for cause of Accusation against MALAHAT MICHELLE AMIN
17 (hereinafter "Respondent"), is informed and alleges as follows:

18 1

19 Complainant makes this Accusation against Respondent in his official capacity.

20 2

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

24 3

25 Before the California Secretary of State, Respondent's Application to become a
26 Notary Public was denied effective February 14, 2008 for failure to disclose the conviction set
27 forth in Paragraph 4, below.

1 FACTORS IN AGGRAVATION

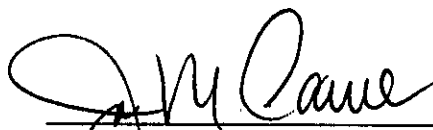
2 4

3 On or about November 15, 1991, in the Superior Court of the State of California,
4 County of Alameda, Case No. 355543, Respondent was convicted of violating Section 484(a) of
5 the California Penal Code (Petty Theft), a misdemeanor and a crime involving moral turpitude
6 which bears a substantial relationship under Section 2910, Title 10, California Code of

7 5

8 The facts alleged in Paragraph 4, above, constitute cause under Section 10177(f)
9 and Section 490 of the Code for suspension or revocation of Respondent's license under the
10 Real Estate Law.

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

15
16 
17 JOE M. CARRILLO
18 Deputy Real Estate Commissioner

19 Dated at Sacramento, California,
20 this 27 day of February, 2009.