

FILED

November 21, 2011

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

DEPARTMENT OF REAL ESTATE

Telephone: (916) 227-0789

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
MALISSA RENEE BAILEY,)
Respondent.)

No. H-5273 SAC

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: Respondent MALISSA RENEE BAILEY (herein "Respondent"):

On April 12, 2010, a restricted real estate salesperson 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 of March 10, 2010, in Case Number H-5273 SAC. This Decision granted the right to the issuance of a restricted real estate salesperson license subject to the provisions of Section 10156.7 of the Business and Professions Code (hereinafter "the Code") and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of the Code.

On October 28, 2011, in Case No. H-5701 SAC, an Accusation by a Deputy Real Estate Commissioner of the State of California was filed alleging cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

1 NOW, THEREFORE, IT IS ORDERED under authority of Section 10156.7 of
2 the Code that any restricted real estate salesperson license heretofore issued to Respondent, and
3 the exercise of any privileges thereunder, is hereby suspended pending final determination made
4 after the hearing on the aforesaid Accusation.

5 IT IS FURTHER ORDERED that all license certificates and identification cards
6 issued by the Department of Real Estate which are in the possession of Respondent be
7 immediately surrendered by personal delivery or by mailing in the enclosed self-addressed
8 envelope to:

9 DEPARTMENT OF REAL ESTATE
10 ATTN: Flag Section
11 Post Office Box 187000
12 Sacramento, CA 95818-7000

13 This order shall be effective immediately.

14 DATED: 11/17/11

15 BARBARA J. BIGBY
16 Acting Real Estate Commissioner

17 
18
19
20
21
22
23
24
25
26
27

FILED

MAR 16 2010

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By K. Mar

In the Matter of the Application of

MALISSA RENEE BAILEY,

Respondent.

NO. H-5273 SAC

OAH NO. 2009110006

DECISION

The Proposed Decision dated February 8, 2010, 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. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

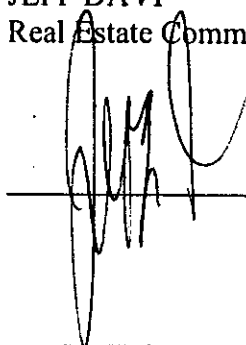
This Decision shall become effective at 12 o'clock noon on

APR - 6 2010

IT IS SO ORDERED

3/10/2010

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

MALISSA RENEE BAILEY,

Respondent.

Case No. H-5273 SAC

OAH No. 2009110006

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings, on January 12, 2010, in Sacramento, California.

John W. Barron, Counsel, Department of Real Estate, represented complainant.

William W. Ashley, Attorney at Law,¹ represented respondent who was present.

The case was submitted for decision on January 12, 2010.

FACTUAL FINDINGS

1. Complainant, Tricia D. Sommers, a Deputy Real Estate Commissioner of the State of California, filed the Statement of Issues in her official capacity on October 19, 2009.
2. Respondent made application to the Department of Real Estate of the State of California (Department) for a real estate salesperson license on or about December 12, 2008. The application is subject to the provisions of Business and Professions Code section 10153.4.

Criminal Conviction History

3. On November 15, 2002, respondent was convicted in the Superior Court of California, County of Shasta, in Case Number 02-6742, on her plea of no contest to violating

¹ William W. Ashley, Attorney at Law, 1016 Lincoln Avenue, San Rafael, California 94901.

Penal Code section 459 (2nd degree/commercial burglary), a misdemeanor.² The court placed respondent on three years probation, with terms and conditions requiring her to serve 10 days in jail, obey all laws, submit to search and seizure, stay away from Winco Foods, and pay fines/restitution.

The facts and circumstances of the offense were that on September 5, 2002, respondent entered a Winco Foods store in Redding, placed seven boxes of Sudafed in her purse, and left the store without paying for the medicine. Respondent told police that her new boyfriend had driven her to the store and asked her to go inside and steal as many Sudafed packages as she could. Respondent denied knowing her boyfriend's reason for wanting large quantities of Sudafed. The boyfriend drove away and was not apprehended or prosecuted. Respondent did not see him after this date.

4. On April 21, 2003, respondent was convicted in the Superior Court of California, County of Eureka, in Case Number CR031107S, on her plea of guilty to violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of .08 percent or more), a misdemeanor. Imposition of sentence was suspended and the court placed respondent on three years summary probation, with terms and conditions requiring her to serve one day in jail, not drive with any measurable BAC, attend a first offender alcohol program, attend a Victim Impact Panel, and pay fines/restitution. Respondent's license was restricted for 90 days. The offense date was February 9, 2003.

5. On September 12, 2005, respondent was convicted in the Superior Court of California, County of Eureka, in Case Number CR053066S, on her plea of guilty to violating Vehicle Code section 23152, subdivision (a) (driving under the influence (DUI)), and Penal Code section 243, subdivision (b) (battery on a peace officer), both misdemeanors. Imposition of sentence was suspended and the court placed respondent on three years probation, with terms and conditions requiring her to serve one day in jail, obey all laws, attend and comply with a drug treatment assessment, write a letter of apology to the officer, attend a first offender alcohol program, and pay fines/restitution. Respondent's license was restricted for 90 days. Respondent was on a prior grant of probation at the time of this offense, however, no formal violation was charged.

The facts and circumstances of the offense were that on May 14, 2005, a witness reported to police that respondent had committed a DUI. Police went to the home of respondents' parents, where she lived. She was asleep when they arrived. Richard Bailey,

² Penal Code section 459 provides in pertinent part that any person who "enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, ... with intent to commit grand or petite larceny or any felony is guilty of burglary. ... '[I]nhabited' means currently being used for dwelling purposes, whether occupied or not."

Penal Code section 460 sets forth the degrees of the offense of burglary and provides that "every burglary of an inhabited dwelling house, vessel, ... trailer coach, or the inhabited portion of any other building is burglary of the first degree." (Pen. Code, § 460, subd. (a).) All other kinds of burglary are of the second degree. (Pen. Code, § 460, subd. (b).)

respondent's father, woke her and respondent went outside to speak to law enforcement. Respondent's father testified that at some point, he heard his daughter screaming. The officer had sprayed respondent with pepper spray because he said he was assaulted. Mr. Bailey believed that respondent was in no condition to assault anyone. Mr. Bailey helped place respondent in the patrol car and she was driven away. Respondent felt that the officer escalated the situation, however now takes "full responsibility" for her "immature actions." She prepared a letter of apology to the officer as ordered by the court.

Mitigation/Rehabilitation

7. On September 11, 2003, respondent completed a 3-month alcohol recovery program. On October 6, 2008, respondent completed an 18-month alcohol recovery program. She attended Alcoholics Anonymous for 18 months. She stated that she drinks alcohol "rarely" at social events, no more than two drinks, and was emphatic about never driving on those occasions. She has paid all fines and court restitution. There was no damage to property or persons as a result of her offenses. She has not suffered any subsequent convictions. Respondent is no longer on probation. She has consulted with her attorney and plans to pursue dismissal of the charges pursuant to Penal Code 1203.4.

8. Respondent is 29 years of age. In preparation for applying for her California real estate license, she completed the following courses: Real Estate Principles, on November 11, 2008; Real Estate Finance, on November 7, 2008; and Real Estate Practice, on September 16, 2008. Additionally, she takes at least one on-line seminar each month on topics including FHA approval, VA approval, underwriting, new products, and new rules and laws. From 2002 to 2005, she attended college and took courses in psychology, sociology, and math.

9. Since 2003, respondent has worked as a loan processor and loan assistant for Humboldt Mortgage Company and for the last seven years, for Rick Bailey Mortgage, her father's company. She stated that he has taught her to work with "integrity, honesty, and ethics." Respondent is active in the Humboldt Association of Realtors. Her goal is to further her career as a loan officer and eventually take over the family business with her older sister.

10. Mr. Bailey, respondent's father, acknowledged at hearing that respondent had gone through a stage in her life where she was "out of control." He feels this has been resolved. He has fired her in the past, and knows he is not an "easy guy to work for." Before he hired her back, he stated that he explained to her what would be acceptable. Her duties at work include processing loan packages. She cannot quote rates, but she is responsible for obtaining all proper documentation, submitting documents to lenders for approval, and ordering loan documents and closing funds. Mr. Bailey is very satisfied with her performance on the job. Mr. Bailey stated that respondent is "responsible, has an outstanding work ethic, takes control of situations, and handles files perfectly." He has received calls from representatives and lenders complementing her work. Respondent lives independently but is regularly involved in family functions and recreation.

11. In August 2009, respondent became involved with the Toys for Kids program. She replaced her sister as head chair on the committee. Her responsibilities involve raising money for toys for the needy children of Humboldt County. The program also organizes toy drives. Last season the committee raised \$30,000 within a three month period. Realtor Tracy Helard-Shumard wrote a letter in support of respondent's work on the committee and application for licensure. Respondent is also involved in hosting realtor appreciation mixers as a form of thanks to area realtor donors.

12. Respondent submitted eight character letters from professionals familiar with her effort to obtain her real estate license.³ Several professionals, including escrow officers Andrea Ullsmith and Roxanne Bennett; broker Joshua Kinch; and agent Lezlie Waker; expressed knowledge of respondent's past transgressions and police involvement. Collectively, the letters of recommendation describe respondent as diligent, dependable, professional, and trustworthy. Ms. Bennett stated, "I have never known anyone who has turned her life around more completely than [respondent]." The letters also express the strong love and support respondent has received from her "close-knit" family, and the excellent business reputation of Rick Bailey Mortgage Unlimited.

13. Based on all of the facts set forth in Factual Findings 3 through 12, respondent has demonstrated the level of rehabilitation sufficient to ensure public safety. She has been off informal probation for approximately one-and-one-half years. She has the support of her family and has worked to earn the trust of the business community in her region. It is noted that at hearing, she presented as professional, articulate, and respectful to the department and the court. Her testimony regarding events in her past was credible and sincere, and she did not minimize her personal responsibility for her convictions.

LEGAL CONCLUSIONS

Applicable Laws

1. Business and Professions Code section 480, subdivision (a)(1), authorizes a board to deny a license on the grounds that the applicant has been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. The 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.

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

³ These letters were admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d), which states in pertinent part, "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. ..."

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. California Code of Regulations, title 10, section 2910, subdivision (a) states that "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 Business and Professions Code sections 480 and 490, if 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.

[¶] ...[¶]

- (11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

Cause for Discipline

4. The crimes of store burglary/theft, DUI, and battery/resisting a peace officer, for which respondent was convicted, as set forth in Factual Findings 3, 4, and 5, 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)(1), (8), and (11).

5. Cause for denial of respondent's application for a real estate salesperson license exists pursuant to Business and Professions Code sections 480 and 10177, subdivision (b), in conjunction with California Code of Regulations, title 10, section 2910, subdivisions (a)(1) and (8), by reason of Factual Finding 3, and Legal Conclusion 4, in that respondent's theft conviction involved obtaining property belonging to another and an unlawful act perpetrated for financial or economic benefit.

6. Cause for denial of respondent's application for a real estate salesperson license exists pursuant to Business and Professions Code sections 480 and 10177, subdivision (b), in conjunction with California Code of Regulations, title 10, section 2910,

subdivision (a)(11), by reason of Factual Findings 4 and 5, and Legal Conclusion 4, in that respondent's DUI convictions involved driving and alcohol consumption.

7. Cause for denial of respondent's application for a real estate salesperson license exists pursuant to Business and Professions Code sections 480 and 10177, subdivision (b), in conjunction with California Code of Regulations, title 10, section 2910, subdivision (a)(8), by reason of Factual Finding 5, and Legal Conclusion 4, in that respondent's conviction for battery/resisting a peace officer involved an unlawful act with the threat of doing substantial injury to the person of another.

Rehabilitation

8. The department has developed guidelines for use in evaluating the rehabilitation of an applicant for issuance of a license, which are set forth in California Code of Regulations, title 10, section 2911. (Cal. Code. Regs., tit. 10, § 2911, subds. (a)-(n).) Additionally, 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).)

9. In consideration of these guidelines, almost five years have passed since respondent's last offense date. She has been off probation since September 2008. She has been successfully employed as a loan processor for several years and has gained the respect of several members of the real estate community. At hearing, she exhibited maturity and awareness of her past transgressions. Though on rare social occasions she accepts a drink, she appears to have internalized the wise choice of curtailing intake and not driving. She has the support of a close family and will be supervised by a respected real estate firm in Humboldt County. Her volunteer work with Toys for Kids demonstrates mature awareness for the needs of others.

Conclusion

10. Considering all of the facts presented, respondent has sustained her burden to establish that she can be licensed at this time without harm to the public, with appropriate restrictions and conditions.

ORDER

The application of Malissa Renee Bailey, for a real estate salesperson license is denied by reason of Legal Conclusions 5 through 7; provided, however, that pursuant to Legal Conclusions 8, 9, and 10, a conditional restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7, and to the following limitations, conditions and restrictions imposed under the 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 three (3) 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:

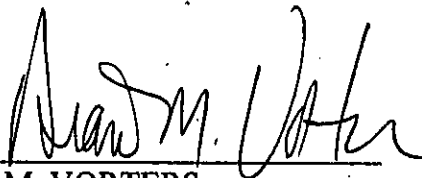
(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(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.

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.

5. Pursuant to Business and Professions Code section 10154, if respondent has not satisfied the requirements for an unqualified license under section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

Dated: February 8, 2010



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

1 JOHN W. BARRON, Counsel (SBN 171246)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0792

FILED

OCT 19 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

10 In the Matter of the Application of)
11) H-5273 SAC
12 MALISSA RENEE BAILEY,)
13) STATEMENT OF ISSUES
14 Respondent.)

15 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
16 of the State of California, for Statement of Issues against MALISSA RENEE BAILEY,
17 (hereafter "Respondent"), is informed and alleges as follows:

18 1

19 Complainant makes this Statement of Issues against Respondent in her official
20 capacity.

21 2

22 Respondent made application to the Department of Real Estate of the State of
23 California for a real estate salesperson license on or about December 12, 2008.

24 3

25 On or about November 15, 2002, in the Superior Court of the State of California,
26 County of Shasta, Case No. MCRDCRM020006742, Respondent was convicted of violating
27 Section 459 of the California Penal Code (Commercial Burglary), a misdemeanor and a crime

1 that bears a substantial relationship under Section 2910, Title 10, of the California Code of
2 Regulations (hereafter "the Code"), to the qualifications, functions or duties of a real estate
3 licensee.

4 4

5 On or about April 21, 2003, in the Superior Court of the State of California,
6 County of Humboldt, Case No. CR031107S, Respondent was convicted of violating Section
7 23152(b) of the California Vehicle Code (Driving Under the Influence), a misdemeanor and
8 a crime that bears a substantial relationship under Section 2910, Title 10, of the Code, to the
9 qualifications, functions or duties of a real estate licensee.

10 5

11 On or about September 12, 2005, in the Superior Court of the State of California,
12 County of Humboldt, Case No. CR053066S, Respondent was convicted of violating Section
13 23152(a) of the California Vehicle Code (Driving Under the Influence) and Section 243(b) of
14 the California Penal Code (Battery of a Peace Officer), both misdemeanors and crimes that
15 bear a substantial relationship under Section 2910, Title 10, of the Code, to the qualifications,
16 functions or duties of a real estate licensee.

17 6

18 Respondent's criminal convictions, described in Paragraphs 3 through 5, above,
19 constitute cause for denial of Respondent's application for a real estate salesperson license
20 pursuant to the provisions of Section 480(a) and 10177(b) of the Code.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 WHEREFORE, Complainant prays that the above-entitled matter be set for
2 hearing and, upon proof of the charges contained herein, that the Commissioner refuse to
3 authorize the issuance of, and deny the issuance of, a real estate salesperson license to
4 Respondent, and for such other and further relief as may be proper under the provisions of the
5 law.

6
7
8 Tricia D. Sommers
9 TRICIA D. SOMMERS
 Deputy Real Estate Commissioner

10 Dated at Sacramento, California,
11 this 15th day of October, 2009.