

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

SEP - 9 2010

DEPARTMENT OF REAL ESTATE

By K. Contreras

In the Matter of the Application of)
)
KAREN LYNETTE MILLER,)
)
Respondent.)
_____)

NO. H-5381 SAC
N-2010060394

DECISION

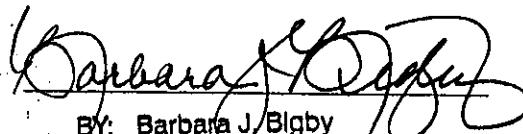
The Proposed Decision dated August 6, 2010, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon on
September 29, 2010.

IT IS SO ORDERED 9/9, 2010.

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of :

KAREN LYNETTE MILLER,

Respondent.

Case No. H-5381 SAC

OAH No. 2010060394

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, in Sacramento, California, on July 6, 2010.

Tricia D. Sommers, a Deputy Real Estate Commissioner of the State of California (complainant), was represented by Annette E. Ferrante, Counsel, Department of Real Estate.

Karen Lynette Miller (respondent) was present and represented herself.

The record was held open until July 13, 2010, for respondent to submit additional letters in support of her application. No letters were received. The record was closed, and the matter was submitted for decision on July 13, 2010.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in her official capacity on April 27, 2010.

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 March 24, 2009.

Criminal Convictions

3. Respondent was convicted of the following offenses between 1990 and 1998, all of which bear a substantial relationship to the qualifications, functions or duties of a real estate licensee:

- a. On January 16, 1990, in the San Mateo County Superior Court (Case No. F189970), respondent was convicted of violating Penal Code section 487.1, grand theft, a felony.
- b. On February 21, 1990, in the San Francisco County Municipal Court (Case No. 1218802), respondent was convicted of violating Penal Code section 666, petty theft with a prior, a misdemeanor.
- c. On May 1, 1990, in the San Francisco County Municipal Court (Case No. 1232806), respondent was convicted of violating Penal Code section 666, petty theft with a prior, a misdemeanor.
- d. On May 1, 1990, in the San Francisco County Municipal Court (Case No. 1189838), respondent was convicted of violating Penal Code sections 484/490.5, petty theft, a misdemeanor.
- e. On May 16, 1991, in the San Francisco County Superior Court (Case No. 139903), respondent was convicted of violating Health and Safety Code section 11350a, possession of a controlled substance, a felony.
- f. On April 19, 1991, in the San Francisco County Municipal Court, respondent was convicted of violating Penal Code section 487.1, grand theft, a misdemeanor.
- g. On August 8, 1991, in the Contra Costa County Municipal Court (Case No. 74558-8), respondent was convicted of violating Penal Code sections 484/666, petty theft with priors, a misdemeanor.
- h. On August 23, 1991, in the Contra Costa County Superior Court (Case No. 912063-5), respondent was convicted of violating Penal Code sections 484/666, petty theft with priors, a felony.
- i. On November 19, 1993, in the San Francisco County Superior Court (Case No. 152430), respondent was convicted of violating Welfare and Institutions Code sections 10980, subdivision (c)(2), fraud in obtaining aid; and 10980, subdivision (g), unlawful use or sale of food stamps, both felonies.
- j. On February 8, 1995, in the Contra Costa County Superior Court (Case No. 942276-7), respondent was convicted of violating Penal Code sections 484/666, petty theft with priors, a misdemeanor.
- k. On October 24, 1997, in the San Francisco County Superior Court (Case No. 1698040), respondent was convicted of violating Health and Safety Code section 11351.5, possession of cocaine base for sale, a felony.

1. On August 28, 1998, in the Contra Costa County Superior Court (Case No. 168522-1), respondent was convicted of violating Penal Code sections 484/666, petty theft with priors, a misdemeanor.

Respondent's Evidence

4. Respondent acknowledges and admits to all the above convictions, and disclosed them on her Salesperson License Application. She came from a broken home, and was on her own by age 15. She had a child at age 15. She explained that she resorted to shoplifting to "feed my baby." Respondent was also on drugs. The first of her convictions occurred when she was age 19. By age 20 she was using cocaine base, and shoplifted to support her drug habit. She continued on drugs for several years and shoplifted over this same period. By 1993, she was off drugs. She described herself as rebellious and angry during this period. She had three children and she is grateful that they had a good father while she was out in the streets and engaging in "all this madness."

She regularly shoplifted clothing and items from department stores and sold them. She tried to obtain money anyway she could, including using a family member's name and social security number to fraudulently obtain public assistance and food stamps.

5. Her life began to turn around for the better in 1996. At that time, a lady friend expressed belief in her and was willing to help in practical ways. This included paying for respondent to go to school to learn to drive a bus. Respondent became employed as a bus driver in 1999. Except for a period during which she was recovering from an injury, she has been driving a bus for different companies. She currently works for Reliant Travel out of Oakland, a company that transports passengers to area casinos. She has worked in the past for Silverado Stages, Gary Express, Oakland International Airport, the Port of Oakland (6 years) and miscellaneous charter bus companies. As a bus driver, respondent is subject to random drug testing.

6. Respondent is now age 40. She noted that she is very different than the person she once was. She is married and has four children, all doing well. Her youngest is still at home, and attending high school. Respondent has applied for and received her cosmetology license from the State of California. She has had a longstanding interest in real estate, took the requisite course work and reported doing well in her real estate classes. She would like to work for Bruce Caldwell Williams, a real estate broker in San Jose, California. Mr. Williams is operating under a restricted broker's license, something respondent was first made aware of at hearing.

7. Respondent completed her last criminal probation term in 2000. She has had no further involvement in the criminal justice system.

Respondent has a very supporting husband and family. She received her GED from Cosumnes River College. She is an active member of Shiloh Baptist Church in Sacramento.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Business and Professions Code section 480, subdivision (a), states in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) 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. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

[¶]...[¶]

(3)(B) 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), states:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, 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 substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an 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.

3. California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (a)(4), (a)(8), and (a)(10), states:

- (a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

[¶]...[¶]

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

[¶]...[¶]

- (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶]...[¶]

- (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.

[¶]...[¶]

- (10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

Burden of Proof

4. Business and Professions Code section 10152 authorizes the Real Estate Commissioner to require proof of an applicant's honesty and truthfulness before issuing a real estate license, but it does not address the burden of proof in a hearing on the application. In the absence of a statute to the contrary, the burden of proof is on the applicant seeking a

license or permit to prove his or her fitness for issuance of the license he or she seeks.¹ In the absence of any law to the contrary, the required standard of proof is a preponderance of the evidence.²

Substantial Relationship

5. Business and Professions Code section 480, subdivision (a), provides in general that boards may deny a license based on conviction of a crime, only if the crime is substantially related to the qualifications, functions or duties of the business or profession for which application is made. Business and Professions Code section 10177, subdivision (b), provides that the Department may deny a license if the applicant has been convicted of a felony, or of a misdemeanor that is substantially related to the qualifications, functions, or duties of a real estate licensee.

6. Respondent's November 19, 1993 convictions for fraud in obtaining aid and unlawful use or sale of food stamps were for crimes that are substantially related to the qualifications, functions and duties of a real estate salesperson within the meaning of California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (a)(4), and (a)(8). Respondent's theft convictions are substantially related to the qualifications, functions and duties of a real estate salesperson within the meaning of California Code of Regulations, title 10, section 2910, subdivision (a)(1) and (a)(8). Respondent's theft and other convictions, taken together, are substantially related to the qualifications, functions and duties of a real estate salesperson within the meaning of California Code of Regulations, title 10, section 2910, subdivision (a)(10), in that they involved conduct which demonstrates a pattern of repeated and willful disregard of law.

Cause for Denial

7. Cause for denial of respondent's application for a real estate salesperson license was established pursuant to Business and Professions Code sections 10177, subdivision (b), and 480, subdivisions (a)(1) and (3), by reason of Finding 3, and Legal Conclusion 6, in that respondent was convicted of crimes that are substantially related to the qualifications, functions and duties of a real estate licensee.

8. Cause for denial of respondent's application for a real estate salesperson license was established pursuant to Business and Professions Code sections 10177, subdivision (b), and 480, subdivisions (a)(1) and (3), by reason of Finding 3, and Legal Conclusion 6, in that respondent was convicted of felonies that are substantially related to the qualifications, functions and duties of a real estate licensee.

¹ *Martin v. Alcoholic Beverage Appeals Board* (1950) 52 Cal.2d 238; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.

² See Evidence Code section 115.

Fitness for Licensure

9. 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 criteria to evaluate the rehabilitation of a license applicant, after a criminal conviction, are set forth in California Code of Regulations, title 10, section 2911.³

³ California Code of Regulations, title 10, section 2911, states:

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

- (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct 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 applicant.
- (c) Expungement of criminal convictions resulting from immoral or antisocial acts.
- (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) Abstinance from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.
- (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
- (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.
- (i) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
- (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
- (k) Correction of business practices resulting in injury to others or with the potential to cause such injury.
- (l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.
- (n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:
 - (1) Testimony of applicant.
 - (2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

10. Considering the Department's rehabilitation criteria, it has been more than ten years since respondent's most recent criminal conviction. Respondent successfully completed her criminal probation in 2000. There was no evidence that she obtained expungement of her criminal convictions. There is substantial evidence that respondent has turned her life around. She has been steadily employed as a bus driver, has been licensed by the State of California Cosmetology Board, and has completed her GED and real estate course of study. She has a stable family life, and has raised four children. She is active in her church. Respondent did not provide confirmation from a prospective employing broker who would be willing to closely supervise respondent if she were to be granted a restricted real estate salesperson license. Respondent did not provide references from individuals in support of her application for a real estate salesperson license. She was given an opportunity to do so. No witnesses testified on respondent's behalf.

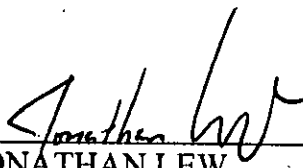
Conclusion

11. Respondent has made progress in her rehabilitation efforts, for which she is certainly to be commended and encouraged. A significant period has gone by since her last involvement in the criminal justice system. She is much older and clearly a different person. However, respondent has a very long history of criminal convictions. Through her past actions she demonstrated serious problems involving theft and dishonesty. Given the opportunities available to real estate professionals to access personal information and property, respondent must fully demonstrate that she no longer represents any threat to clients and the public. Respondent has not sustained her burden to establish that she can be licensed at this time without harm to the public. For these reasons, it would be contrary to the public interest to grant a real estate salesperson license to respondent, with or without restrictions.

ORDER

The application of Karen Lynette Miller for a real estate salesperson license is denied by reason of Legal Conclusions 7 and 8.

Dated: August 6, 2010



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

-
- (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
 - (4) Evidence from psychiatrists 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.

FILED

APR 27 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

1 ANNETTE E. FERRANTE, Counsel (SBN 258842)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789

6
7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Application of)
11) NO. H-5381 SAC
12) STATEMENT OF ISSUES
13 KAREN LYNETTE MILLER,)
14 Respondent.)
15)

16 The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy
17 Real Estate Commissioner of the State of California, for this Statement of Issues against
18 KAREN LYNETTE MILLER, aka Karen L. Hargrove and Angela Rothschild (hereinafter
19 "Respondent"), is informed and alleges as follows:

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21 On or about March 24, 2009, Respondent made application to the Department of
22 Real Estate of the State of California for a real estate salesperson license.

23 2

24 On or about October 12, 1989, in the San Mateo County Superior Court, State of
25 California, Case Number F189970, Respondent was convicted of violating Section 487.1 of the
26 California Penal Code (Grand Theft), a felony which bears a substantial relationship under
27 Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties
of a real estate licensee.

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On or about February 21, 1990, in the San Francisco County Municipal Court, State of California, Case Number 1218802, Respondent was convicted of violating Section 666 of the California Penal Code (Petty Theft with a Prior), a misdemeanor which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

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On or about May 1, 1990, in the San Francisco County Municipal Court, State of California, Case Number 1232806, Respondent was convicted of violating Section 666 of the California Penal Code (Petty Theft with a Prior), a misdemeanor which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

5

On or about May 1, 1990, in the San Francisco County Municipal Court, State of California, Case Number 1189838, Respondent was convicted of violating Section 484/490.5 of the California Penal Code (Petty Theft), a misdemeanor which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

6

On or about May 16, 1991, in the San Francisco County Superior Court, State of California, Case Number 139903, Respondent was convicted of violating Section 11350a of the California Health and Safety Code (Possession of a Controlled Substance), a felony which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

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On or about April 19, 1991, in the San Francisco County Municipal Court, State of California, Respondent was convicted of violating Section 487.1 of the California Penal Code (Grand Theft), a misdemeanor which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

8

On or about August 8, 1991, in the Contra Costa County Municipal Court, State of California, Case Number 74558-8, Respondent was convicted of violating Sections 484/666 of the California Penal Code (Petty Theft with Priors), a misdemeanor which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

9

On or about August 23, 1993, in the Contra Costa County Superior Court, State of California, Case Number 912063-5, Respondent was convicted of violating Section 484/666 of the California Penal Code (Petty Theft with Priors), a felony which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

10

On or about November 19, 1993, in the San Francisco County Superior Court, State of California, Case Number 152430, Respondent was convicted of violating Sections 10980(c)(2), (Fraud in Obtaining Aid), and 10980(g) (Unlawful use or Sale of Food Stamps) of the California Welfare and Institutions Code, each a felony which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

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2 On or about February 8, 1995, in the Contra Costa County Superior Court, State
3 of California, Case Number 942276-7, Respondent was convicted of violating Section 484/666
4 of the California Penal Code (Petty Theft with Priors), a felony which bears a substantial
5 relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications,
6 functions, or duties of a real estate licensee.

7 12

8 On or about August 28, 1998, in the Contra Costa County Superior Court, State
9 of California, Case Number 168522-1, Respondent was convicted of violating Section 484/666
10 of the California Penal Code (Petty Theft with Priors), a misdemeanor which bears a substantial
11 relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications,
12 functions, or duties of a real estate licensee.

13 13

14 On or about October 24, 1997, in the San Francisco County Superior Court, State
15 of California, Case Number 1698040, Respondent was convicted of violating Section 11351.5
16 of the California Health and Safety Code (Possession of Cocaine Base for Sale), a felony which
17 bears a substantial relationship under Section 2910, Title 10, California Code of Regulations,
18 to the qualifications, functions, or duties of a real estate licensee.

19 14

20 Matter in Aggravation

21 On or about March 19, 1991, in the San Mateo County Municipal Court, State of
22 California, Case Number NM207848A, Respondent was convicted of violating Section 487.1 of
23 the California Penal Code (Disturbing the Peace), an infraction.

24 14

25 Respondent's conviction, as alleged in Paragraphs 2 through 13, above,
26 constitutes cause for denial of Respondent's application for a real estate license under Sections
27 480(a) and 10177(b) of the California Business and Professions Code.

1 WHEREFORE, the 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 other provisions of
5 law.

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8 TRICIA D. SOMMERS
9 Deputy Real Estate Commissioner

10 Dated at Sacramento, California,
11 this 13th day of April, 2010.
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