

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**

MAY 09 2011

DEPARTMENT OF REAL ESTATE

By L. Just

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In the Matter of the Accusation of )  
 )  
 STACEY KATHLEEN MEDINAS, )  
 )  
 Respondent. )  
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NO. H-5454 SAC

OAH NO. 2010100397

DECISION

The Proposed Decision dated April 6, 2011, 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.

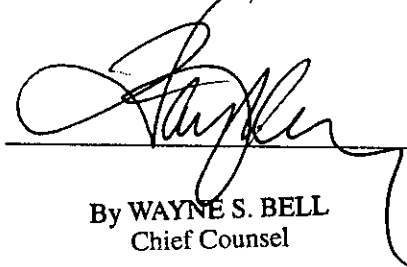
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate salesperson license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on MAY 30 2011.

IT IS SO ORDERED 5/6/2011.

Real Estate Commissioner

  
By WAYNE S. BELL  
Chief Counsel

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

STACEY KATHLEEN MEDINAS,

Respondent.

Case No. H-5454 SAC

OAH No. 2010100397

**PROPOSED DECISION**

Coren D. Wong, Administrative Law Judge with the Office of Administrative Hearings, State of California, heard this matter on March 28, 2011, in Sacramento, California.

Jason D. Lazark, Real Estate Counsel, and Nathan Hodges, certified legal intern, represented complainant, Tricia D. Sommers, Deputy Real Estate Commissioner of the State of California (complainant).

Respondent Stacey Kathleen Medinas represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on March 28, 2011.

**SUMMARY**

Complainant seeks to discipline respondent's real estate salesperson license based on her felony conviction for embezzlement from an elderly person, her stepfather, on March 5, 2010.<sup>1</sup> The evidence establishes cause for discipline. Outright revocation of respondent's license is justified because she contends that her

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<sup>1</sup> The Accusation alleges that respondent was convicted of a misdemeanor. As discussed in Factual Finding 3 below, however, she pled nolo contendere to, and was convicted of, a felony even though the charge was later reduced to a misdemeanor. (See, *People v. Jones* (1995) 33 Cal.App.4th 1087, 1093-1094 [a defendant suffers a conviction upon entry of his guilty or nolo contendere plea]; *People v. Banks* (1959) 53 Cal.2d 370 [for purposes of statute that prohibits ex-felons from being in possession of a firearm, defendant was convicted of prior felony once he plead guilty].)

conviction is wrongly based on a loan from her stepfather.<sup>2</sup> Additionally, her conviction is too recent to adequately assess her rehabilitation.

## FACTUAL FINDINGS

1. The Department of Real Estate (Department) issued Real Estate Salesperson License No. S/01396792 to Stacey Kathleen Medinas (respondent) on August 26, 2003. Respondent's license has been active at all times relevant herein and will expire on August 25, 2011, unless renewed or revoked.

2. Complainant filed an accusation in her official capacity on August 26, 2010, seeking to discipline respondent's license based on the criminal conviction described in Factual Finding 3.

### *Respondent's Criminal Conviction*

3. On September 1, 2009, respondent pled nolo contendere to, and was convicted of, a felony violation of Penal Code section 368, subdivision (d), embezzlement from an elderly person, in the Superior Court of the State of California, County of Sacramento, Case No. 08F02667. Respondent entered the plea with the understanding that if she repaid the victim in full by the sentencing date, the District Attorney would make a motion to reduce this matter to a misdemeanor and respondent would be sentenced to 30 days in the Sacramento County Jail. The matter was continued to March 5, 2010, for sentencing.

Respondent repaid the victim in full and on March 5, 2010, the District Attorney's motion to reduce the charge to a misdemeanor was granted. Imposition of judgment and sentence was suspended, and respondent was placed on informal probation for three years. She was ordered to spend 30 days in the Sacramento County Jail, with a recommendation of the Sheriff's Work Project, and pay fines and assessments in the amount of \$250.

4. This conviction arose out of respondent's 81-year-old stepfather's report to the Sacramento Sheriff's Department on December 16, 2007, that respondent withdrew \$6,000 from his bank account without permission.

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<sup>2</sup> For reasons explained in Factual Finding 7, respondent is not allowed to impeach her conviction by explaining that her stepfather loaned her the money she was convicted of embezzling.

*Factors in Aggravation, Mitigation, and Rehabilitation*

5. Respondent is 42 years old. She has been in the real estate lending industry for over 25 years. She has been a licensed real estate salesperson since August 26, 2003, and her license has never been disciplined. She currently works for Connect Realty.com, Inc.

6. Respondent testified that she has a history of borrowing money from her stepfather when she is short on funds because a loan she brokered does not close as expected or the sale of a home she is selling takes longer than anticipated. She always repays the loans. But she offered no evidence of any such loans or repayments, such as a promissory note or a check showing repayment. While she introduced copies of cashier's checks made payable to her stepfather, there is no evidence to corroborate her testimony that they represent repayment of prior loans.

7. Respondent attempted to impeach her conviction by explaining that she borrowed the money in question from her stepfather's checking account with his permission. But a licentiate's conviction "stands as conclusive evidence of [her] guilt of the offense charged." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) Additionally, a certified copy of an official record of the conviction is admissible to prove "the commission . . . of [the] criminal offense . . . recorded by the record." (Evid. Code, § 452.5, subd. (b); see, *People v. Duran* (2002) 97 Cal.App.4th 1448, 1460-1461 [Evid. Code, § 452.5, subd. (b) creates a hearsay exception which allows for admission of qualified court record to not only prove fact of conviction but also that the offense reflected in record actually occurred].)

And while evidence of the circumstances of the underlying crime may be admissible as evidence of extenuating circumstances, mitigation, or rehabilitation (*Arneson v. Fox, supra*, 28 Cal.3d at p. 449), respondent offered no evidence, other than her testimony, that the money was in fact received as part of a bona fide loan.

8. Jenette Champagne, respondent's responsible broker at Connect Realty.com, Inc., testified as a character witness. While Ms. Champagne attested to respondent's substantial skills as a real estate salesperson and that respondent is well-liked by her colleagues, "character testimony alone does not establish the necessary rehabilitation (citation), particularly when no motivation is offered for the breach in the prior pattern of good behavior." (*In re Giddens* (1981) 30 Cal.3d 110, 116.)

9. The Department has developed criteria for evaluating a licentiate's rehabilitation in disciplinary proceedings. Those which are relevant here are: 1) the passage of at least two years since the conviction, and 2) successful completion or early termination of probation. (Cal. Code Regs., tit. 10, § 2911(a) and (e); see, *In re Andreani* (1939) 14 Cal.2d 736, 749 [existence of rehabilitation difficult to establish affirmatively, "but its nonexistence may be 'proved' by a single act."])

10. It has only been one year since respondent's conviction, and she will be on criminal probation for another two years. There has not been enough time to evaluate her rehabilitation. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to a person's good behavior while on probation or parole because such conduct is expected].) Furthermore, she has yet to admit the wrongfulness of her actions. (*Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation."]))

11. Respondent has not met her burden of establishing her rehabilitation.

### LEGAL CONCLUSIONS

1. The Department may revoke or suspend a real estate salesperson license if the licentiate has been convicted of a crime. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b).) The crime must be substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, § 10177, subd. (b); see, *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757; 769 [conduct for which discipline sought must relate to practice of particular profession such that conduct "demonstrates an unfitness to practice such profession."]) The Department has adopted regulations to assist with determining whether a particular crime is substantially related to the qualifications, functions, or duties of a licentiate. (Cal. Code Regs., tit. 10, § 2910.)

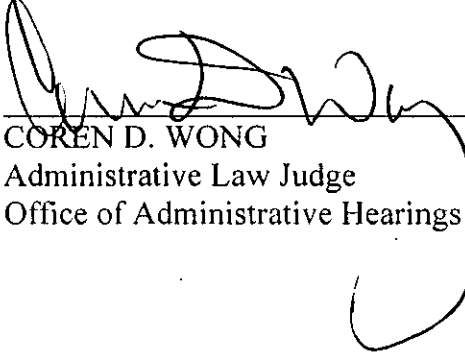
2. As discussed above, respondent has been convicted of embezzlement from an elderly person. (Factual Finding 3.) Her conviction is substantially related to the qualifications, functions, or duties of a licentiate because the underlying crime involves "[t]he fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(1).) It also constitutes the commission of an "unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

3. The Department established by clear and convincing evidence cause for disciplining respondent's real estate salesperson license for the reasons specified in Legal Conclusion 2. And as discussed in Factual Finding 11, respondent has not established rehabilitation. Therefore, when all of the evidence is considered, it is clear that public protection requires that her license be revoked. (See, *Griffiths v. Superior Court, supra*, 96 Cal.App.4th 757, 773 [public protection is primary purpose of licensing statutes].)

ORDER

All licenses and licensing rights of respondent Stacey Kathleen Medinas under the Real Estate Law are REVOKED.

DATED: April 6, 2011

  
COREN D. WONG  
Administrative Law Judge  
Office of Administrative Hearings

FLAG

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**FILED**  
AUG 26 2010  
DEPARTMENT OF REAL ESTATE  
By *L. Frost*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11	In the Matter of the Accusation of	)	
		)	No. H-5454 SAC
12		)	
13	STACEY KATHLEEN MEDINAS,	)	<u>ACCUSATION</u>
		)	
14	Respondent.	)	
		)	

16 The Complainant, TRICIA D. SOMMERS, acting in her official capacity as a  
17 Deputy Real Estate Commissioner of the State of California, for cause of Accusation against  
18 STACEY KATHLEEN MEDINAS (herein "Respondent"), is informed and alleges as follows:

19 1.

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

23 2.

24 On or about March 5, 2010, in the Superior Court of the State of California,  
25 County of Sacramento, Case No. 08F02667, Respondent was convicted of violating Penal Code  
26 § 368(d) (embezzlement and identity theft of an elderly person), a misdemeanor which bears a

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1 substantial relationship under Section 2910, Title 10, California Code of the Regulations to the  
2 qualifications, functions or duties of a real estate licensee.

3 3.

4 The facts alleged above in Paragraph 2 constitute grounds under Sections 490  
5 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of  
6 Respondent under Part 1 of Division 4 of the Code.

7 WHEREFORE, Complainant prays that a hearing be conducted on the  
8 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing  
9 disciplinary action against all licenses and license rights of Respondent under the Real Estate  
10 Law, and for such other and further relief as may be proper under the provisions of law.

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12  
13   
14 TRICIA D. SOMMERS  
Deputy Real Estate Commissioner

15 Dated at Sacramento, California,  
16 this 14<sup>th</sup> day of August, 2010.