

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

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DEPARTMENT OF REAL ESTATE

By K. Contreras

In the Matter of the Application of)
)
ANASTASIA CAROLYN GWIN,) NO. H-5512 SAC
)
) N-2010120625
)
Respondent.)

DECISION

The Proposed Decision dated January 31, 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. 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 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 March 21, 2011.

IT IS SO ORDERED 2/25, 2011.

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby
BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

ANASTASIA CAROLYN GWIN,

Respondent.

Case No. H-5512 SAC

OAH No. 2010120625

PROPOSED DECISION

Administrative Law Judge Linda A. Cabatic, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on January 18, 2011.

Nathan Hodges, Legal Intern, under the supervision of Annette E. Ferrante, Real Estate Counsel, represented complainant Tricia D. Sommers (complainant), Deputy Real Estate Commissioner.

Respondent Anastasia Carolyn Gwin was present and represented herself.

This matter arises as a result of the criminal convictions sustained by respondent. Evidence was received, and the matter was submitted for decision on January 18, 2011.

FACTUAL FINDINGS

1. On or about February 18, 2010, respondent filed her application with the Department of Real Estate (department) for a real estate salesperson license.
2. On November 24, 2010, complainant Tricia D. Sommers, in her official capacity as a Deputy Real Estate Commissioner, for the department, filed a Statement of Issues against respondent as a result of her criminal convictions.
3. Respondent, timely filed a Notice of Defense on Application on December 8, 2010.
4. On December 13, 2004, respondent pled no contest in Placer County Superior Court to the felony charge of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance – methamphetamine), and to the misdemeanor charge of violating Health and Safety Code section 11364 (possession of drug paraphernalia

– methamphetamine smoking device).¹ Respondent was ordered to serve 120 days in jail, with a credit of 31 days. Respondent was ordered to report to the Placer County Jail on February 5, 2005, and to comply with a variety of terms of probation, including registering as a drug offender pursuant to Health and Safety Code section 11590. She was also ordered to pay a total of \$1,085 in fines, fees and penalties.

5. On February 5, 2005, the date on which respondent was supposed to have turned herself in, she was late and missed her court date. A bench warrant was issued. On May 26, 2005, respondent appeared in Placer County Superior Court and admitted to the violation of probation. The Court imposed an additional sentence of 60 days for this violation and respondent was remanded into custody. In addition to her incarceration, respondent was placed on three years probation.

6. At the time of respondent's arrest, she was a passenger in a vehicle driven by a person who was on parole. The vehicle was stopped by the Roseville Police and the vehicle and respondent were searched. The police found respondent in possession of a controlled substance (methamphetamine) and drug paraphernalia (methamphetamine smoking device). Respondent was an active drug user at the time.

7. In 2005, respondent entered into the New Life Residential Program, where she resided for six months. This facility provided a program for addicts and educated her on topics such as addiction awareness, prevention, health, living skills, and other similar topics.

8. Respondent was referred to the New Life program by Child Protective Services (CPS) and CPS provided funding for this program. Respondent became involved with CPS because CPS responded when it was discovered respondent's daughter was in a home in which respondent and her roommate were involved with drugs. Respondent completed the program and regained custody of her daughter in 2006. After completion of the program, respondent became involved with Narcotics Anonymous and Alcoholics Anonymous programs and now attends one or both of the meetings two or three times a week.

9. Respondent has had three sponsors since 2005 and she participates as a sponsor for women for the Narcotics Anonymous program. She is also a member of the Hospitals and Institutions Committee for the program and is also a member of the Stars Program at the parole office.

10. Respondent has two children, a son and a daughter. Respondent has joint custody of her son and full custody of her daughter. She considers herself to be an active mother.

¹ Respondent disclosed and testified to other arrests on her application at the hearing, but it did not appear that those arrests resulted in convictions.

11. It has been approximately four years since respondent has used drugs or alcohol. She has developed a relapse prevention plan and has a strong support group that consists of people who have had ten or more years of recovery.

12. Respondent did not call any witnesses, but submitted two letters of support. One letter was from Thomas R. Dugally, Senior Vice President for Century 21 All Professional, which attests to her character and integrity. Mr. Dugally believes "respondent will be an asset to the real estate industry and plans to personally mentor her." He is also aware of her criminal convictions.

13. The second letter was from a Robert S. Williams, who is a friend of respondent. Mr. Williams has known respondent for three years and "considers her one of his closest friends." Mr. Williams speaks highly of respondent and believes she deserves a second chance.

14. At the hearing, respondent stated that Mr. Dugally arranged for her to be interviewed by the President of Century 21. After the interview, the President expressed his intent to hire her.

15. Respondent is in the process of paying her fines and fees and has been working at Applebee's Restaurant since 2006. Respondent also completed her probation, as well as three real estate courses.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), the Real Estate Commissioner may deny an application for a real estate license if the applicant has been convicted of a crime that bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee. The department has developed criteria of substantial relationship which is set forth in California Code of Regulations Title 10, section 2910.²

2. Section 2910, subdivision (a) provides, in pertinent part:

(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:

² All references shall be to the California Code of Regulations unless noted otherwise.

[¶ . . ¶]

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

[¶ . . ¶]

3. Respondent pled no contest to the felony charge of possession of a controlled substance and a misdemeanor charge of possession of drug paraphernalia. Respondent's conduct demonstrated a pattern of repeated and willful disregard of the law. (Findings 4 and 5; Legal Conclusion 1.) Respondent was a drug addict and was convicted of drug charges. Respondent was supposed to surrender herself into custody, but failed to appear, causing the issuance of a bench warrant. (Finding 5.) By using drugs and failing to appear, respondent demonstrated a pattern of repeated and willful disregard for the law. (Legal Conclusions 1 and 2.) Cause therefore exists to deny respondent's license.

4. 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.) When an applicant for a real estate license has committed crimes or acts that serve as a cause for denial of an application, the burden is on the applicant to show that she has been sufficiently rehabilitated to justify the issuance of a license.

5. Pursuant to Business and Professions Code section 482, subdivision (a), the department has developed criteria by which to evaluate the rehabilitation of a license applicant after criminal convictions. Section 2911 establishes the Criteria for Rehabilitation, which includes, in pertinent part:

(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.

[¶ . . . ¶]

(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 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 education or vocational training courses for economic self-improvement.

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

[¶]

(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.

(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.

[¶ . . . ¶]

6. Evaluating respondent's circumstances using the department's criteria for rehabilitation, it has been approximately five years since her last Court appearance and she has not suffered any further criminal convictions. (Findings 4 and 5.) Respondent is currently paying the fines and fees imposed upon her by the Court and is making an effort to discharge her adjudicated debts and monetary obligations. (Finding 15.) Respondent has not obtained an expungement of the convictions, but has completed probation. (Finding 15.) Respondent has abstained from the use of controlled substances for the past four years and her family life appears to be stable. (Findings 7, 8, 9 and 10.) Respondent completed three real estate courses. (Finding 15.) Respondent regularly attends Narcotics Anonymous meetings and Alcoholics Anonymous meetings. (Findings 10 and 11.) She is more active in the Narcotics Anonymous program and is helping to ameliorate drug problems by being a sponsor for women. (Findings 10 and 11.)

7. Respondent's testimony and commitment to both the Narcotics Anonymous and Alcoholics Anonymous programs demonstrate her change in attitude. Respondent is a hard working individual who is determined not to revert to her prior lifestyle. Her testimony was credible and seems to have fully embraced the Narcotics Anonymous and Alcoholics Anonymous programs. Cause therefore exists to find that respondent has sustained her burden of showing that she has been rehabilitated.

ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to 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 the authority of section 10156.6 of the 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 the provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the 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.

Dated: January 31, 2011



Linda A. Cabatic
Administrative Law Judge
Office of Administrative Hearings

1 ANNETTE E. FERRANTE, Counsel (SBN 258842)
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4 Sacramento, CA 95818-7007

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DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13 ANASTASIA CAROLYN GWIN,) NO. H- 5512 SAC
14 Respondent.) STATEMENT OF ISSUES
15)

16 The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy
17 Real Estate Commissioner of the State of California (hereinafter "Complainant"), for cause of
18 Statement of Issues against ANASTASIA CAROLYN GWIN (hereinafter "Respondent"), also
19 known as "Anastasia Carolyn Hoyt," alleges as follows:

20 1

21 On approximately February 18, 2010, Respondent made application to the
22 Department of Real Estate of the State of California (hereinafter "the Department") for a real
23 estate salesperson license.

24 2

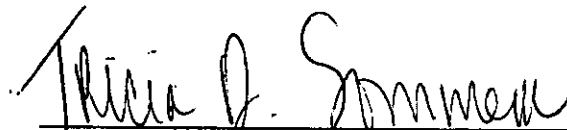
25 On or about December 13, 2004, in the Superior Court of the State of California,
26 County of Placer, in Case No. 62-44390, Respondent was convicted of violating Section 11377(a)
27 of the California Health and Safety Code (Possession of Controlled Substance - Methamphetamine), a

1 felony, and Section 11364 of the California Health and Safety Code (Possession of Drug
2 Paraphernalia - Methamphetamine Smoking Device), a misdemeanor, both crimes which bear a
3 substantial relationship under Section 2910, Title 10, of the California Code of Regulations, to
4 the qualifications, functions or duties of a real estate licensee.

5 3

6 The facts described in Paragraph 2, above, constitute cause for denial of
7 Respondent's application for a real estate license under Sections 480(a) (Denial of License by
8 Board - Conviction of Crime) and 10177(b) (Conviction of Crime Substantially Related to
9 Qualifications, Functions or Duties of Real Estate Licensee) of the California Business and
10 Professions Code.

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

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17
18 

19 TRICIA D. SOMMERS
20 Deputy Real Estate Commissioner

21
22 Dated at Sacramento, California,
23 this 18th day of November, 2010.