

FILED

FEB 27 2012

Department of Real Estate
BY *[Signature]*

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
ELIZABETH ALEXANDRA POULSEN,) NO. H-5702 SAC
Respondent.) OAH NO. 2011111023

DECISION

The Proposed Decision dated January 18, 2012, 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 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

MAR 19 2012

IT IS SO ORDERED 2/17/12.

BARBARA J. BIGBY
Acting Real Estate Commissioner

Barbara J. Bigby

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ELIZABETH ALEXANDRA POULSEN,

Applicant.

Case No. H-5702 SAC

OAH Case No. 201111023

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on January 5, 2012, in Sacramento, California.

Richard K. Uno, Counsel, represented complainant, Tricia D. Sommers, a Deputy Real Estate Commissioner for the Department of Real Estate (department), State of California.

Applicant Elizabeth Alexandra Poulsen appeared and represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on January 5, 2012.

FACTUAL FINDINGS

1. On March 3, 2011, applicant filed with the department an application for a real estate salesperson license. On her application, applicant disclosed a 2006 felony conviction for assault with force likely to cause great bodily injury.

2. On October 31, 2011, complainant made and filed the Statement of Issues in her official capacity. Complainant seeks to deny applicant's application on the basis of her 2006 felony conviction.

3. Applicant timely filed a Notice of Defense to the Statement of Issues. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency for the State of California, pursuant to Government Code section 11500, et seq.

Respondent's Conviction

4. On August 14, 2006, in Mono County Superior Court, Case No. MFE 05-4894, applicant, upon a plea of no contest, was convicted of violating Penal Code section 245, subdivision (a)(1), assault with force likely to cause great bodily injury, to wit: fist and feet, a felony. Imposition of sentence was suspended, and applicant was placed on five years supervised probation. The court sentenced applicant to serve 270 days in county jail, and ordered her to pay \$715 in fines, fees and civil penalties. On May 13, 2009, the court reduced applicant's felony conviction to a misdemeanor pursuant to Penal Code section 17, subdivision (b). On December 19, 2011, the court dismissed applicant's plea of guilty pursuant to Penal Code section 1203.4.

5. The circumstances underlying this conviction occurred as applicant and two friends were leaving a bar in Mammoth Lakes, California. One of applicant's male friends exchanged words with a group of people who were also leaving the bar. As applicant and her friends were driving away from the parking lot, someone threw rocks at applicant's car, so they turned around, exited the car, and engaged in an altercation with the group of people. An off-duty California Highway Patrol Officer was at the scene, and applicant was ultimately arrested. Applicant believes that the charges against her were "escalated" and unfair.

Factors in Aggravation, Mitigation and Rehabilitation

6. In her Conviction Detail Report (RE 515D), applicant stated that "In September of 2005 I was involved in an altercation in Mammoth Lakes CA. I was 19 at the time – I am now 25. The altercation involved several people. I was originally convicted of a felony, however this charge was reduced to misdemeanor pursuant to section 17(b) PC in 2009. I was released 3 months early from jail due to good behavior. I was also released from formal probation 2 years early due to good behavior."

7. At hearing, applicant expressed remorse for her conduct, and asserted it is difficult for her to "identify with that person" today because she is not a violent person. She believes she made a mistake when she engaged in this conduct at the age of 19. Since that time, however, applicant has successfully completed her probation, moved away from the area, made new and positive relationships, and attained a 3.6 grade point average in her college courses in San Jose, California. Applicant intends to complete her college courses once her son starts school. Applicant is currently raising her two-year-old son in a "stable and healthy environment." She worked as a Reservation Agent at the Resort at Squaw Creek from June 2010 through July 2011. She maintains active membership in the Truckee River Beautification Project for which she conducts trash walks during the summer months. She has "ambition and life goals," and has worked hard, and hopes that her conviction will not prevent her from attaining her life goals. She has family members who work in real estate, but

does not have a sponsoring broker. Applicant described herself as an honest person, and asserted that she would like an opportunity to obtain a restricted real estate salesperson license so she can continue pursuing her life goals.

8. Applicant submitted three letters of recommendation. Stephen Cobbs was applicant's direct supervisor when she worked at the University Inn & Conference Center in Santa Cruz, California beginning in August 2007. In a letter dated May 2008, Mr. Cobbs described applicant as a "hard-working self-starter who is a [sic] resourceful, creative, and solution-oriented." He praised her "superior written and verbal communication skills," and asserted that "[s]he gets along extremely well with staff," and is "highly respected, as both a person and a professional, by her colleagues."

9. Darren Kramer was applicant's direct supervisor when she worked at the Tahoe Yacht Club from June 2008 through September 2008. In a letter dated September 6, 2008, Mr. Kramer described applicant as "very driven and motivated," with an "amazing ability to read people and immediately make them feel welcomed and comfortable in any setting." According to Mr. Kramer, applicant is "extremely personable and works well with everyone. She has the ability to make quick and responsible decisions even in a very high stress environment." Mr. Kramer also asserted that applicant is well-respected as a team member by other employees.

10. Tracie Neal was applicant's Probation Officer from May 25, 2006 through November 2008. In a letter dated December 22, 2011, Ms. Neal asserted that "Ms. Poulsen acknowledged her mistakes and identified the future that she wanted to have. I observed Ms. Poulsen to have a positive outlook on life, to be goal oriented, friendly and compassionate, determined, and committed to living the life that she had dreamed for herself." Ms. Neal also noted that "when I speak with Ms. Poulsen it is hard to believe she was involved in behavior that brought her before the Court and to the Probation Department."

11. Applicant is to be commended for the steps she has taken towards rehabilitation. She successfully completed the terms and conditions of her probation, started taking college courses, and obtained employment. In addition, applicant's probation officer spoke highly of applicant's change in attitude and her positive outlook on life during probation. Despite these accomplishments, however, applicant completed her criminal probation less than one month ago. And while applicant enjoys an excellent reputation with her former supervisors for a strong work ethic and an ability to work well with others, there was no indication that applicant's supervisors were aware of her criminal past, suggesting that she did not disclose that information to them. In addition, no testimony was presented by a broker who might be willing to supervise applicant if she is granted a restricted salesperson license. Therefore, insufficient time has passed since applicant's completion of criminal probation, and applicant has not provided sufficient assurances to the department to

justify granting her a real estate salesperson license at this time. When all the facts and circumstances are considered, it would not be in the public interest and welfare to issue applicant a real estate salesperson license at this time, even on a probationary basis.

LEGAL CONCLUSIONS

1. The burden of proof is on the applicant for a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) In addition, rehabilitation is akin to an affirmative defense; the burden of proof of establishing an affirmative defense is on the proponent of that defense. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

2. A preponderance of the evidence establishes cause for the denial of applicant's application for a real estate license under Business and Professions Code section 480, subdivisions (a) and (c), and section 10177, subdivisions (a) and (b).

3. Pursuant to Business and Professions Code section 480, subdivision (a), a board may deny a license on the grounds that the applicant has one of the following:

(a)(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. . . .

(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.

[¶] . . . [¶]

4. Pursuant to Business and Professions Code section 10177, subdivision (b), provides, in pertinent part, that the commissioner may deny an application for a real estate salesperson license if the applicant has "been convicted of, a felony, . . . 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."

5. California Code of Regulations, title 10, section 2910, subdivision (a)(8), provides that when considering whether a license should be denied, the crime shall be deemed to be substantially related to the qualifications, functions or duties of a licensee if it involves the "[d]oing 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."

Cause for Denial

6. As set forth in the Factual Finding 4, applicant has been convicted of a felony violation of Penal Code section 245, subdivision (a)(1), assault with force likely to cause great bodily injury. Therefore, cause exists to deny applicant's application pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), in conjunction with California Code of Regulations, title 10, section 2910, subdivision (a)(8).

Fitness for Licensure

7. The department's rehabilitation criteria have been reviewed and considered in light of the evidence presented.¹ As set forth in the Factual Findings

¹ As set forth in California Code of Regulations, title 10, section 2911, the following criteria are to assist in evaluating the rehabilitation of an applicant for issuance of a license:

- (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) 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.

and Legal Conclusions as a whole, and particularly Factual Finding 11, applicant has failed to demonstrate that she is sufficiently rehabilitated to justify granting her a real estate salesperson license at this time, even on a probationary basis.

- (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.
- (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.
 - (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.

8. It has been five years since applicant's conviction, and her conviction has been dismissed pursuant to Penal Code section 1203.4. She appears to be fulfilling her familial obligations. She has moved away from Mono Lake, and has established new and positive social relationships. However, applicant has not sustained enrollment in formal education courses or employment. And with the exception of the letter from her probation officer, no evidence was presented by family members or friends to demonstrate how applicant's attitude has changed since the commission of the crime in 2006. In addition, no evidence was presented by a broker who might be willing to supervise applicant if she was granted a restricted real estate salesperson license. Finally, it has been less than one month since applicant successfully completed the terms and conditions of her probation. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 ["Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole."].) Therefore, more time and additional activities are needed to provide assurances to the department that applicant has sufficiently rehabilitated to justify issuing her a license.

ORDER

The application of Elizabeth Alexandra Poulsen for licensure as a real estate salesperson is denied.

DATED: January 18, 2012


REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings

FILED

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October 31, 2011

DEPARTMENT OF REAL ESTATE

By 

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

12 In the Matter of the Application of }
13 ELIZABETH ALEXANDRA POULSEN, }
14 Respondent. }
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16 No. H-5702 SAC
17 STATEMENT OF ISSUES
18

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20 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
21 of the State of California, for Statement of Issues against ELIZABETH ALEXANDRA
22 POULSEN, (Respondent), alleges as follows:

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23 Complainant makes this Statement of Issues in her official capacity.

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24 On or about March 3, 2011, Respondent made application to the Department of
25 Real Estate of the State of California (herein "the Department") for a real estate salesperson
26 license.

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27 On or about August 14, 2006, in the Superior Court of the State of California,
County of Mono, Case No. MFE 05-4894, Respondent was convicted of violating Section 245(a)

1 (1) of the California Penal Code (Assault with Deadly Weapon/Likely to Cause Great Bodily
2 Injury), a felony and a crime which bears a substantial relationship under Section 2910, Title 10,
3 California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

4

5 Respondent's criminal conviction, as described in Paragraph 3, above, constitutes
6 cause for denial of his application for a real estate license under Sections 10177(b) (Further
7 Grounds for Disciplinary Action-Conviction of Crime) and 480(a) (Conviction of Crime) of the
8 Code.

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

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15 TRICIA D. SOMMERS

16 Deputy Real Estate Commissioner

17 Dated at Sacramento, California,
18 this 16th day of October, 2011.

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