

FILED

JUN 27 2012

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: *R. Mederholt*

In the Matter of the Application of)

ANGELA MARIE OSBORN,)

Respondent.)

No. H-5734 SAC

L-2012010814

DECISION

The Proposed Decision dated May 21, 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 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 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.

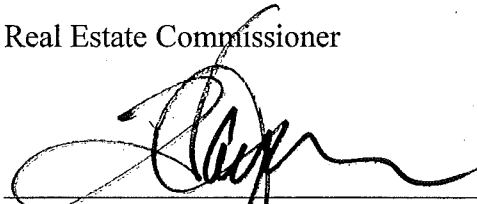
This Decision shall become effective at 12 o'clock noon on

JUL 17 2012

IT IS SO ORDERED

June 22, 2012

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

Angela Marie Osborn,

Respondent.

Case No. H-5734 SAC

OAH No. 2012010814

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on March 22, 2012.

Diane Lee, Staff Counsel, represented Complainant Tricia D. Sommers, Deputy Real Estate Commissioner in the Department of Real Estate (Department).

Frank M. Buda represented Angela Marie Osborn (respondent Angela Marie Osborn).

Oral and documentary evidence was received at the hearing. The record was held open for submission of documentation showing that the status of respondent's Colorado real estate license had been changed from inactive to active. The document was admitted as Respondent's Exhibit G under Government Code section 11513, subdivision (d), to supplement Respondent's testimony. The matter was submitted April 23, 2011.

The Department brings this Statement of Issues to deny Respondent's application for a real estate broker license. For the reasons set out below, the license is denied and respondent may apply for a restricted license.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued this Statement of Issues in her official capacity.
2. On May 19, 2011, Respondent applied for a real estate salesperson license. The Department refused to grant the application and Respondent timely requested a hearing.

License Discipline in Colorado

3. Respondent obtained a Colorado real estate salesperson license in 2000, and became a licensed real estate broker in Colorado in 2004.¹ On May 2, 2011, respondent and the Colorado Real Estate Commission stipulated to an order that her broker's license be suspended for 30 days and that she complete 36 hours of continuing education (in addition continuing education courses normally required for license renewal) within six months. It also provided that she would pay a \$2,750 fine if she did not meet the order's terms.

4. The cause for discipline was a June 2004 purchase of a home in Denver by respondent and her husband (they were married in January 2004), in which respondent also acted as the buyers' broker. According to respondent's testimony at hearing (and the investigative report on which the stipulation was based), two independent appraisals valued the house at more than \$2,200,000, although the listing price was only \$1,800,000. The parties signed and placed in escrow a contract stating that the sale price was \$2,267,000. Respondent and her husband obtained a loan for that amount and paid it into escrow. Pursuant to a side agreement outside of escrow, the sellers refunded \$467,000 to respondent and her husband, who used the money to remodel the house. Thus the true purchase price was \$1,800,000, and closing statement overstated it by \$467,000. A loan officer from the lender, Countrywide Home Loans, knew about the side transaction, as did its branch manager, who was the loan officer's husband. The loan officer had worked on several deals with respondent's husband, who was a commercial real estate developer. Attorneys were involved in both the sale agreement and the out-of-escrow side agreement. Respondent testified at hearing that she relied on the expertise of attorneys who advised that the side deal was proper, but she knew at the time that it was wrong to have the closing statement not reflect the true sale price, both because it was contrary to Colorado Real Estate Commission Rule E-5, and because inaccurate sale price information creates an inaccurate impression of real estate value when publicized or used for "comparable sale" purposes in appraisals. Respondent also acknowledged at hearing that similarly loose or shady practices were common in the real estate and mortgage loan industries at the time.² Respondent and her husband sold the house for about \$3.3 million in 2006 and repaid the loan.

5. The Department offered no evidence of the process involved in the discipline of respondent's Colorado license, other than what is set out in her stipulation with the Colorado Real Estate Commission, which recites, at paragraphs 3 through 6:

The Commission commenced an investigation of Respondent's activities....

¹ So respondent testified. The Statement of Issues alleges that respondent has been licensed in Colorado as a broker since April 1, 2000. The Department apparently assumed that a notation in a Colorado Real Estate Commission Investigative Report (included in Exhibit 3) saying "Issue date — 04/01/00" meant that her broker license, rather than her salesperson licensesalesperson license, was issued that date. There is no other evidence of a licensing date.

² Respondent did not volunteer this testimony as an excuse for her conduct; it was a response to a direct question from the bench.

The Commission notified Respondent of ... the investigation [and] offered Respondent the opportunity to give written data, views and arguments concerning the complaint and the investigation.

The Commission considered the factual findings of the Division of Real Estate's...investigation and Respondent's response...and found reasonable grounds exist to refer Respondent to hearing for violations of the real estate licensing law.

On January 25, 2011, the Commission filed a Notice of Duty to Answer, Notice to Set, Notice of Hearing, and Notice of Charges...against Respondent in the Office of Administrative Courts.

Mitigation and Rehabilitation

6. Respondent's husband's real estate development business crashed along with the real estate bubble, leaving them overextended and insolvent. Respondent and her husband separated in mid-2009, and respondent moved to Redondo Beach with their two small children. She moved back to Colorado in December 2009 and lived with her mother for two months because she "was broke." She then rented a house in Denver and sold real estate until she moved back to Southern California in August 2011. Her divorce was final in May 2011. Although her ex-husband is obligated to pay \$865 per month to support their six-year-old daughter and three-year-old son children (plus half the cost of having the children travel between California and Colorado), he last made a full payment in November 2011, and has paid nothing since then except \$400 shortly before the hearing of this matter in March 2012. Since applying for a California real estate license, respondent has ceased to use her married name and goes by Angela Marie Weldon.

7. Respondent needed an extension of time to complete the continuing education required by the disciplinary order, partly because she lacked the money to pay for it, and partly because she moved to Orange County three months after the disciplinary order took effect and had no plans to return to Colorado, so her Colorado broker license was not a pressing concern. The Colorado Department of Regulatory Agencies agreed to place her license on inactive status pending her completion of the requirements, and never imposed the \$2,750 fine it would have imposed under the disciplinary order had it deemed respondent in violation of its terms. She has completed the required continuing education and her Colorado license is now active.

8. Respondent obtained a Florida real estate broker license in October 2011 because she planned to work with investors who would buy short-sale properties there, but the venture did not go forward and she now does not plan to use that license. It cost her about \$200 to obtain the Florida license, the course work for which consisted of online tests.

9. Respondent now lives with a man she met through their two daughters' play dates. He testified on her behalf at hearing. The actual content of his testimony — a glowing opinion of her character and her commitment as a parent — is entitled to little

weight in light of his obvious bias, but his testifying is an indication that respondent has established a stable domestic relationship.

10. Respondent coaches AYSO soccer, in which her older child is involved.

11. Respondent works as an assistant for the Tim Carr Group, a real estate brokerage in Newport Beach. A letter from Tim Carr describes her as honest, professional, capable and ethical, and says that she disclosed her Colorado suspension at her first interview with him. Carr wants to employ respondent as a salesperson.

12. Respondent also introduced letters from two of respondent's Colorado real estate customers, one of them also a former co-worker, attesting to her professionalism and integrity. One of them met her children and was impressed with her as a parent.

LEGAL CONCLUSIONS

1. Cause exists to deny respondent's license application under Business and Professions Code³ sections 480 and 10177, subdivision (f), subdivision (f), as alleged in paragraph 4 of the Statement of Issues. Section 480, subdivision (a)(3) allows a board to deny a license to an applicant who has committed an act that would be grounds for suspension or revocation of a license if committed by a licensee. Section 10177, subdivision (f), which applies specifically to the Department, allows it to deny a license to an applicant who has had a license in another state, suspended for an acts that would be grounds for suspension or revocation of a California real estate license, if the suspension resulted from a process that gives the licensee fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the procedural provisions of California's Administrative Procedure Act.

2. Respondent's Colorado suspension was caused by an act that would be cause for discipline in California. Section 10177, subdivision (j) provides that a license can be suspended or revoked for "fraud or dishonest dealing." Deliberately creating a false closing statement (Factual Finding 4), the act for which respondent was disciplined (Factual Finding 3) is dishonest dealing.

3. The procedural steps described in respondent's stipulation with the Colorado Real Estate Commission — notification of investigation with opportunity to "give written data, views and arguments," followed by formal notices of charges and hearing in an "Office of Administrative Courts" (Factual Finding 5)— is substantially similar to the Accusation procedures in Government Code sections 11500 et seq.

³ Statutory references are to the Business and Professions Code, unless otherwise stated.

4. Respondent has the burden of showing rehabilitation. The Department's criteria for rehabilitation are set out in California Code of Regulations,, title 10, section 2911,⁴ and include:

(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.

[¶]...[¶]

(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.

[¶]...[¶]

(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....

5. Significantly, it has been almost eight years since the act on which the Department bases its denial (Factual Finding 4; CCR § 2911, subd. (a)).⁵ Had respondent committed the same act in California, by 2007 the three-year limitation period of Business and Professions Code section 10101 would likely have barred an accusation to discipline her license.

⁴ Further references to the California Code of Regulations are cited as "CCR."

⁵ The Department argues that the passage of two years begins with the date discipline was imposed in Colorado, as it would begin with a conviction. Respondent argues that the passage of time begins with the act on which the discipline was based, and the regulation's plain wording compels her interpretation: if the discipline does not involve a criminal conviction, the time is counted from the "act of the applicant." The "act" must be the conduct in 2004, not the discipline in 2011, which was an act of the Colorado Real Estate Commission, not respondent. Similarly, the changes in family life, social and business relationships, and attitude (CCR § 2911, subds. (h), (m) and (n), respectively) are also judged in comparison to 2004.

6. Respondent has established a stable domestic life and is fulfilling her parental responsibilities with two small children. (Factual Findings 6, 9, 10 and 12; CCR § 2911, subd. (h).)

7. Respondent has completed the course work and passed examinations not only for a salesperson license in California, but also for a broker license in Florida. (Factual Finding 8; CCR § 2911, subd. (i).)

8. Respondent's AYSO volunteer work (Factual Finding 10) is entitled to some weight as community involvement (CCR § 2911, subd. (l)), even if it may not amount to "significant or conscientious" involvement.

9. Respondent's business and social relationships (CCR § 2911, subd. (m)) and attitude (CCR § 2911, subd. (n)) have both changed markedly since 2004, when an overheated real estate market made her and her husband temporary millionaires with no family responsibilities. She has left Denver, divorced a husband who cannot or will not contribute his share of child support, and resettled in new surroundings among new co-workers. She makes no excuses about her conduct in 2004 and admits that it was wrong (Factual Finding 4.)

10. Respondent committed an act of dishonesty in performing a real estate broker's duties. But that act occurred nearly eight years ago, and she has had a clean record since then. Significantly, the Colorado Real Estate Commission felt that it merited only a 30-day suspension, and now a supervising broker wants to hire her as a salesperson. The public interest will be protected if she is granted a restricted license.

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 under Business and Professions Code section 10156.5. The restricted license issued to the 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 authority of Section 10156.6 of that 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 issuance of an unrestricted real estate license or 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.


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:

(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 shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: May 21, 2012



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings