

FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

SEP 04 2012

DEPARTMENT OF REAL ESTATE

By L. Gore

In the Matter of the Accusation of

JUDITH LECHTENBERG MILLER,

Respondent.

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NO. H-5741 SAC

OAH NO. 2012010566

DECISION

The Proposed Decision dated July 26, 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.

Pursuant to Section 11517(c)(2)(C) of the Government Code, the following corrections are made to Proposed Decision:

Paragraph 2 on Page 1 of the Proposed Decision is hereby amended to read "legal intern", not "certified legal intern".

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 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 SEP 24 2012.

IT IS SO ORDERED

8/31/2012

REAL ESTATE COMMISSIONER

Wayne S. Bell
By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JUDITH LECHTENBERG MILLER,

Respondent.

Case No. H-5741 SAC

OAH No. 2012010566

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on July 26, 2012, in Sacramento, California.

Truly Sughrue, Real Estate Counsel, and Katherine Pankow, certified legal intern, represented complainant Tricia Sommers, a Deputy Real Estate Commissioner of the State of California.

No one appeared for or on behalf of respondent Judith Lechtenberg Miller.

Evidence was received, the record was closed, and the matter was submitted for decision on July 26, 2012.

SUMMARY

Complainant seeks to discipline respondent's real estate broker license on the ground that she was convicted of grand theft by embezzlement. Cause exists for discipline. Respondent introduced no evidence of her rehabilitation, and she has more than two years remaining on her criminal probation. Therefore, the only discipline supported by the evidence is the outright revocation of her license.

FACTUAL FINDINGS

1. On August 7, 1992, the Department of Real Estate (Department) issued Real Estate Broker License No. B/00934493 (license) to respondent. The license expires on October 15, 2013, unless renewed or revoked. There is no history of prior discipline of the license.

2. On December 19, 2011, complainant, acting solely in her official capacity as a Deputy Real Estate Commissioner of the State of California, filed an Accusation seeking to discipline respondent's real estate broker license on the ground that she was convicted of grand theft by embezzlement.

3. The Department served the Accusation and other jurisdictional documents on respondent by certified mail on December 19, 2011. Respondent signed the Domestic Return Receipt acknowledging receipt of the documents that same day.

4. Respondent signed and returned to the Department a Notice of Defense on Accusation on December 25, 2011. A Notice of Hearing was served on respondent at the address she provided on her Notice of Defense on Accusation.

5. This matter was called on the date and at the time and location specified in the Notice of Hearing. Respondent did not appear, no one appeared on her behalf, and an evidentiary hearing was conducted as a default proceeding pursuant to Government Code section 11520.

Criminal Conviction

6. On September 16, 2011, in the Superior Court of the State of California, in and for the County of Santa Cruz, Case No. F20742, respondent was convicted of a misdemeanor violation of Penal Code section 487, subdivision (b)(3), grand theft by embezzlement. Imposition of sentence was suspended, and respondent was placed on informal probation for three years. She was ordered to pay restitution to the victim in an amount to be determined by the probation department. She was also ordered to pay fines, penalties, and fees in the total sum of \$310, \$100 of which was stayed pending revocation of her probation. While the court indicated that it was not opposed to terminating probation after restitution has been paid in full, no evidence was introduced that respondent has paid restitution in full or that probation has been terminated.

7. Thomas Carozza is a Veteran and suffers from mental health issues. He historically has had close friends handle his financial affairs because he is unable to do so by himself. He sold a mobile home and received a check in the amount of \$99,750.79. At the urging of respondent, his long time friend, Mr. Carozza opened a bank account at Union Bank and deposited the proceeds of the check. Respondent then convinced him to withdraw \$98,000 and deposit it into her account at Union Bank with the understanding that she would be the trustee of the money and distribute monthly sums to him for living expenses.

Mr. Carozza received regular monthly checks at first, but eventually there were delays in his receipt of checks. When asked, respondent blamed the delays on problems with the bank. To solve these problems, respondent convinced Mr. Carozza to transfer the money into a new account at Monterey Credit Union. When Mr. Carozza asked for a large sum of money to purchase a mobile home, respondent told him that the money was gone because the Internal Revenue Service drained her bank accounts to pay back taxes she owed.

Mr. Carozza went to the Capitola Police Department with two friends to report respondent's conduct. The police conducted an investigation and determined that respondent had embezzled \$52,123 from Mr. Carozza. The Capitola Police Department forwarded its findings to the Santa Cruz County District Attorney's Office, who filed criminal charges against respondent on April 14, 2011.¹

Factors in Aggravation, Mitigation, and Rehabilitation

8. Respondent is 68 years old and was first licensed by the Department on August 1, 1986, when she was issued her real estate salesperson license. She has been licensed as a broker since August 7, 1992. There is no history of prior discipline of her broker license.

9. No evidence of mitigating circumstances or rehabilitation was introduced on behalf of respondent.

10. The Department has adopted criteria for evaluating a licensee's rehabilitation since committing the crime underlying the conviction for which the Department seeks to discipline a real estate license to determine fitness for licensure. (Cal. Code of Regs., tit. 10, § 2912.) One such criterion that is relevant here is the passage of at least two years since the conviction. (Cal. Code of Regs., tit. 10, § 2912, subd. (a); see, *In re Andreani* (1939) 14 Cal.2d 736, 749 [existence of rehabilitation is difficult to establish affirmatively, "but its nonexistence may be 'proved' by a single act."])

It has not even been one year since respondent's conviction, which occurred on September 16, 2011. Furthermore, she has more than two years remaining on her term of probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 [determining rehabilitation necessarily requires an analysis of behavior while no longer on probation or parole because good conduct is expected while under court supervision].)

11. As discussed below, cause exists to discipline respondent's real estate broker license based on her conviction for grand theft by embezzlement. Respondent committed a serious crime involving dishonesty. (See, *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402 ["Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee."]) When the above evidence is considered, there has not been sufficient time since respondent's conviction to adequately assess her rehabilitation and fitness for licensure in light of her criminal conviction. Therefore, she did not satisfy her burden of demonstrating sufficient rehabilitation such that the Department can be confident that she can perform the duties of a real estate licensee in a manner that is consistent with public health, safety, and welfare, even on a restricted basis. Respondent's real estate broker license should be revoked.

¹ These facts were culled from the police report prepared by the Capitola Police Department (Exhibit 4), which was admitted for all purposes, without objection, pursuant to Government Code section 11514, subdivision (d).

LEGAL CONCLUSIONS

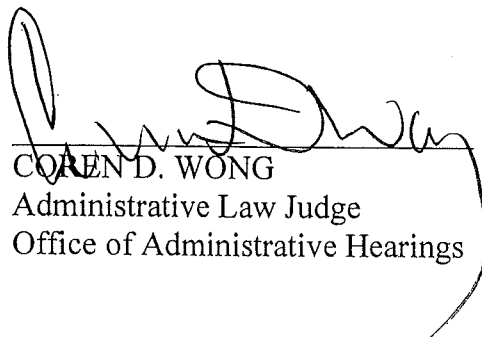
1. A real estate license may be disciplined when the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b).) Respondent has been convicted of grand theft by embezzlement. (Factual Finding 6.) Such crime is substantially related to the qualifications, functions, or duties of a real estate licensee. (Cal. Code of Regs., tit. 10, § 2910, subds. (a)(1) ["The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person."], (a)(4) ["The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end."], and (a)(8) ["Doing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator"]) Therefore, cause for discipline exists pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), individually and collectively.

2. For the reasons discussed in Factual Findings 10 and 11, respondent committed a serious crime involving dishonesty and failed to sustain her burden of establishing sufficient rehabilitation since engaging in her crime such that the Department can be confident that she is capable of performing the duties of a real estate licensee in a manner that is consistent with public health, safety, and welfare, even on a restricted basis. Therefore, her real estate broker license should be revoked.

ORDER

All licenses and licensing rights of respondent Judith Lechtenberg Miller under the Real Estate Law are REVOKED.

DATED: July 26, 2012


COREND D. WONG
Administrative Law Judge
Office of Administrative Hearings