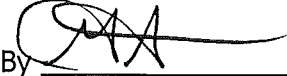


**FILED**

**July 12, 2012**

BEFORE THE  
DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA BY 

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In the Matter of the Application of )  
 ) NO. H-5781 SAC  
SHAWNEE MARIE TALLEY, )  
 ) OAH NO. 2012021140  
Respondent. )  
 )  
 )

DECISION

The Proposed Decision dated June 4, 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, but the right to a restricted real estate 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 AUG 02 2012

IT IS SO ORDERED July 10, 2012

Real Estate Commissioner

  
By WAYNE S. BELL  
Chief Counsel

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

SHAWNEE MARIE TALLEY,

Respondent.

Case No. H-5781 SAC

OAH No. 2012021140

**PROPOSED DECISION**

Joan Herrington, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 9, 2012, in Sacramento, California.

Richard K. Uno, Esq. appeared on behalf of Tricia D. Sommers, Deputy Real Estate Commissioner (complainant).

Shawnee Marie Talley (respondent) appeared on her own behalf.

Evidence was received, the record was closed, and the matter was submitted on May 9, 2012.

**PRELIMINARY MATTERS**

At hearing, the undersigned Administrative Law Judge granted the Department of Real Estate's motion to strike the allegations in Paragraph 6 of the Statement of Issues relating to a May 4, 2001 conviction.

Exhibit 2 contains respondent's social security number. There is potential that the record in this matter could be considered a public record and may be disclosed subject to a public records request. Accordingly, in order to preserve respondent's privacy, the undersigned has redacted respondent's social security number. (*Garden Grove Police Dept. v. Super. Ct.* (2001) 89 Cal.App.4th 430, 434.)

## FACTUAL FINDINGS

1. On June 15, 2011, the Department of Real Estate (Department) received an application from respondent for a real estate salesperson's license ("application").

2. On March 9, 2012, Deputy Real Estate Commissioner Tricia D. Sommers made and filed the Statement of Issues in her official capacity. Complainant seeks to deny respondent's application for a real estate salesperson's license based on the convictions described in Factual Findings 3, 5, and 7 below.

### *Respondent's Convictions*

3. On February 22, 2001, in the Superior Court of the State of California, County of Solano, Case No. FCR188108, respondent was convicted, upon her plea of nolo contendere, of violating Vehicle Code section 10851, subdivision (a), taking of a vehicle without the owner's permission, a felony. The court suspended imposition of sentence and placed respondent on three years' probation, subject to paying fines of \$450 and restitution in an amount unspecified in the record.

4. The circumstances surrounding respondent's February 22, 2001 conviction were that respondent stole a car in Cordelia, California. Respondent testified that she was nineteen years old, easily influenced, and was associating with "unhealthy people, who had no jobs and nothing to lose, and were using drugs." She further testified that her male companion stole the car, and that she merely joined him as a passenger so that she could return to her mother's home in Napa, California. However, the police records<sup>1</sup> show that respondent drove the car, and was accompanied by a female passenger. The police records also show that respondent tried to evade arrest by speeding away, then stopping the car to flee on foot and hide in a ditch. Accordingly, respondent's explanation of the events surrounding this conviction was not credible.

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<sup>1</sup> Police reports, related to the convictions in this matter, were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d), which states that, "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration." The statements of a police officer contained in the officer's report, are admissible under the official records exception to the hearsay rule. (*Lake v. Reed* (1997) 16 Cal.4th 448, 461-462.) The statements of other witnesses contained within the report may be admissible as administrative hearsay to supplement respondent's direct testimony. (*Ibid.*)

5. On June 29, 2001, in the Superior Court of the State of California, County of Solano, Case No. FCR 189535, respondent was convicted, upon her plea of nolo contendere, of violating Health and Safety Code section 11377, subdivision (a), possession of a controlled substance (methamphetamine), a felony. This conviction violated the terms and conditions of respondent's February 2001 probation order. Despite respondent's probation violation, the court again suspended imposition of sentence and placed respondent on three years' probation, subject to serving 90 days jail time, paying \$650 in fines and an unspecified amount in restitution, and completing intensive outpatient therapy at Napa Women's Drug Treatment Program, that included weekly drug testing.

6. The circumstances surrounding respondent's June 29, 2001 conviction were that respondent stopped her car in a "drug-infested neighborhood" to change her pants. The arresting officer stopped to inquire why her car was pulled over with the engine running, and recognized respondent from her previous arrest. When respondent could not provide the arresting officer with details about the car's owner, he searched for the car's registration papers and discovered a plastic zip-lock bag full of methamphetamines. Respondent was reluctant to discuss the circumstances surrounding this June 29, 2001 conviction due to her obvious embarrassment over not being fully dressed at the time of her arrest. Also, respondent was ashamed of her criminal history in general, and tried to disassociate herself from it as much as possible. She attributed this conviction to poor judgment due to her ongoing drug abuse.

7. On October 15, 2003, in the Superior Court of the State of California, County of Napa, Case No. 115135, respondent was convicted, upon her plea of guilty, of violating Vehicle Code section 14601.1, subdivision (a), driving with a suspended license, a misdemeanor. Once again, despite the probation violation, the court suspended imposition of sentence and placed respondent on two years' summary probation, subject to serving five days' jail time, and paying \$1,520 in fines and \$100 in restitution.

8. The circumstances surrounding respondent's 2003 conviction were that respondent turned left in front of an approaching car that did not have time to stop. The officer investigating the collision discovered that respondent was driving with a suspended license. Respondent explained that her license had been suspended for non-payment of fines imposed as part of the sentencing terms of her previous convictions, but provided no evidence of extenuating circumstances.

#### *Respondent's Rehabilitation*

9. Almost 9 years have passed since respondent's last conviction. Yet, as described in Factual Finding 4, respondent still does not accept full responsibility for her actions, as required for complete rehabilitation. She attributes her 2001 convictions to youthful folly and impaired judgment due to her methamphetamine addiction, and disassociates herself from her criminal history. Although respondent's inability to testify

openly and in detail about significant matters, such as her sobriety date, was troubling, it resulted primarily from her obvious and intense shame about her misspent youth.

10. The record showed that respondent has made significant progress towards rehabilitation. Respondent acknowledged all of her offenses by disclosing them on her application. She testified credibly that the drug abuse prevention program convinced her to disassociate herself from her former friends who misled her into becoming addicted to methamphetamines, and maintain her sobriety. Thus, the risk factors that led her to commit her crimes no longer exist.

11. Respondent has expunged her two 2001 convictions and testified credibly that she has fulfilled the sentencing terms of her 2003 conviction. Respondent is in a stable relationship with the father of her two children, and has bought a house. Although, respondent has not performed any community service since her convictions, she has been busy raising her two children while maintaining a responsible position of trust as a property manager of an apartment complex with 193 units for over eight years. Respondent has taken Spanish classes so she can converse more easily with some of the tenants in the apartment complex she manages. Respondent has also successfully completed her real estate course. The letter from the real estate company for which respondent works confirms that she has become a stable, responsible, contributing member of society. Her employer's letter shows the company supports her application for a real estate salesperson's license, but does not indicate whether one of its real estate brokers knows of respondent's criminal history and is willing to supervise her should the Department grant her a restricted license.<sup>2</sup>

12. The primary goal of licensing statutes is to protect the public from unscrupulous and irresponsible licensees. A real estate salesperson is expected to behave with honesty and integrity towards the public and his or her clients, and to inquire and disclose adverse information about the properties he or she is selling. In this close case, respondent's rehabilitative efforts, combined with her employer's letter, weighs in her favor. Respondent has met her burden of proving that she has been sufficiently rehabilitated to justify issuance of a restricted license.

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<sup>2</sup> Respondent's employer's letter of recommendation and the Grant Deed for her house were received in evidence as and are considered to the extent permitted by Government Code section 11513, subdivision (d), which states that, "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration." However, an unsigned computer printout of a letter purportedly from a former employer was excluded from the evidence due to lack of authentication. (Evid. Code, § 1401.)

## LEGAL CONCLUSIONS

### *Burden of Proof*

1. An applicant for a license bears the burden of proving that he or she should be granted a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.)

2. At a hearing on the denial of an application, the respondent "must show compliance" with the statutes and regulations outlined in the Statement of Issues. (Gov. Code, § 11504.) Rehabilitation is like an affirmative defense, so respondent also bears the burden of proving that she is rehabilitated. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

### *Criminal Convictions Substantially Related to a Real Estate Licensee's Qualifications, Functions, or Duties Allow Denial of Licensure*

3. Business and Professions Code section 480, subdivision (a), authorizes a board to deny a license on the grounds that the applicant has been convicted of a crime, has done "any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another;" or "done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license." (Bus. & Prof. Code, § 480, subs. (a) (1), (2), and (3).)

4. Business and Professions Code section 10177, subdivision (b), authorizes the commissioner to deny the issuance of a license to an applicant who has:

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 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. In California Code of Regulations, title 10, section 2910, subdivision (a), the Department has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions or duties of a real estate licensee. These criteria include the following:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

[¶] ... [¶]

(4) The employment of bribery; fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶] ... [¶]

(8) Doing 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.

(9) Contempt of court or willful failure to comply with a court order.

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

6. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson. [Citation.] The Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear. [Citation.]" (*Harrington v. Department of Real Estate* (1989) 214 Cal. App. 3d 394, 402.)

7. The Department contended that respondent's June 29, 2001 conviction for violation of Vehicle Code section 10851, subdivision (a), taking a vehicle without permission, is substantially related to the qualifications, functions, and duties of a real estate licensee pursuant to California Code of Regulations, title 10, subdivisions (a)(1), (4), and (8). While respondent dishonestly took another's property, she did not employ any kind of fraud in the taking. However, in taking the car, respondent knowingly conferred a financial benefit on herself, and also risked damaging the car in the ensuing high speed chase. Accordingly, respondent's June 29, 2001 conviction is substantially related to a real estate licensee's duties pursuant to California Code of Regulations, title 10, subdivision (a)(8). Thus, this conviction establishes cause to deny respondent's application for licensure under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

8. The Department contended that respondent's June 29, 2001 conviction for violation of Health and Safety Code section 11377, subdivision (a), possession of a controlled substance) and her October 15, 2003 conviction for violation of Vehicle Code section 14601.1, subdivision (a), are substantially related to the qualifications, functions and duties of real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(9). The record showed that respondent willfully failed to comply with a court order by violating two separate probations and by driving with a suspended license. Accordingly, respondent's June 29, 2001 conviction and October 15, 2003 conviction are substantially related to a real estate licensee's duties pursuant to California Code of Regulations, title 10, subdivision (a)(9). Thus, each of these convictions establish cause to

deny respondent's application for licensure under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

9. The Department contended that respondent's three convictions, as set forth in Factual Findings 3, 5, and 7, are substantially related to the qualifications, functions and duties of real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(10). The record showed that respondent engaged in a pattern of disregard for the law by committing two felonies and a misdemeanor in three years. Accordingly, respondent's three convictions, as a group, are substantially related to a real estate licensee's duties pursuant to California Code of Regulations, title 10, subdivision (a)(10). Thus, each of respondent's convictions, as set forth in Factual Findings 3, 5, and 7, establishes cause to deny her application under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

### *Rehabilitation*

10. In California Code of Regulations, title 10, section 2911, the Department has set forth the criteria for rehabilitation that it reviews when determining whether an applicant who has been convicted of a crime should be issued a real estate license.<sup>3</sup>

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<sup>3</sup> California Code of Regulations, title 10, section 2911 provides:

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(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.



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(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.

(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 prior 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.

11. When an applicant has committed criminal acts, “fully acknowledging the wrongfulness of his [or her] actions is an essential step towards rehabilitation.” (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

12. “The amount of evidence of rehabilitation required to justify admission [to the California State Bar] varies according to the seriousness of the misconduct at issue.” (*In re Menna* (1995) 11 Cal. 4<sup>th</sup> 975, 987.) Greater proof of rehabilitation is required where respondent’s misconduct “was not the result of an isolated incident, but [of] repeated criminal acts over a period in excess of three years.” (*Ibid.*)

13. The Department asserts that because of respondent’s three convictions, as set forth in Factual Findings 3, 5, and 7, and Legal Conclusions 3 through 9, a longer passage of time is required to establish rehabilitation. (Cal. Code Regs., tit. 10, §2911, subd. (a); *In re Menna* (1995) 11 Cal.4th 975.) As discussed above, almost five times the minimum statutorily required time period has passed since respondent’s last conviction. In *Menna*, the applicant had committed crimes, and caused financial, and professional damage to others, that is not comparative to the actions of respondent here. Therein, the applicant, an attorney, was a compulsive gambler with a history of alcohol use; misappropriated over \$200,000 of his clients’ funds for personal debts; began to manufacture methamphetamines to pay his gambling debts; did not repay the debts as part of his rehabilitation; and had an outstanding tax liability of \$535,000. (*Id.* at p. 979-980, 983.) Here, respondent’s criminal conduct occurred over a shorter period of time and was substantially less injurious to third parties. Respondent has eliminated the risk factors that led to her convictions by changing her associations, stabilizing helpful relationships, and maintaining her sobriety. She has paid all debts incurred due to her criminal conduct. Moreover, she has successfully performed the duties of a highly responsible position that requires the handling of large sums of money for over eight years.

14. As discussed in Factual Finding 9, and Legal Conclusions 1, 2, and 10, respondent has not carried her burden of proving that she has been sufficiently rehabilitated to justify issuance of an unrestricted real estate salesperson’s license. Nonetheless, based on Factual Findings 10 and 11; and Legal Conclusions 1, 2, and 10, respondent has proved that she has been successfully rehabilitated to an extent that justifies the issuance of a restricted license. Because the terms set out below will protect the public, it would not be contrary to public interest grant respondent a restricted license at this time.

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(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.

ORDER

Respondent SHAWNEE MARIE TALLEY's application for a real estate salesperson's license is denied; provided, however, a restricted real estate salesperson's license shall be issued to respondent under Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code Section 10156.6:

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) Respondent's conviction (including a conviction following 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 the issuance of an unrestricted real estate license or the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three 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: June 4, 2012

Joan Herrington  
JOAN HERRINGTON  
Administrative Law Judge  
Office of Administrative Hearings