

FILED

AUG 02 2012

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE By *D. Green*

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)

CARMEN MARIA HANEFFANT,)

Respondent.)

No. H-5798 SAC

OAH NO. 2009030829

DECISION

The Proposed Decision dated July 10, 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 with the following correction:

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

The application for a real estate salesperson license is denied. There is no statutory restriction on when a new application may be made for an unrestricted license. If and when application is made for this license, 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 for the information of Respondent.

This Decision shall become effective at 12 o'clock noon on AUG 22 2012

IT IS SO ORDERED

7/26/2012

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 Statement of Issues
Against:

CARMEN MARIA HANEFFANT,

Respondent.

Case No. H-5798 SAC

OAH No. 2012040644

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on July 2, 2012, in Sacramento, California.

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

Respondent Carmen Maria Haneffant represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on July 2, 2012.

SUMMARY

Complainant seeks to deny respondent's application for a real estate salesperson license on the grounds that respondent has multiple criminal convictions. Cause exists to deny the application. An insufficient amount of time has elapsed since respondent's underlying crimes to fully and adequately assess her rehabilitation and determine if she is capable of performing the duties of a real estate salesperson in a manner that is consistent with public health, safety, and welfare, even on a restricted basis. Therefore, respondent's application for a real estate salesperson is denied.

FACTUAL FINDINGS

1. On August 11, 2011, respondent signed her application for a real estate salesperson license. The Department of Real Estate (Department) received the application on August 19, 2011.

2. On March 29, 2012, complainant, acting solely in her official capacity as Deputy Real Estate Commissioner of the State of California, filed a Statement of Issues seeking to deny respondent's application based on the criminal convictions discussed in Factual Findings 3, 5, and 7.

Criminal Convictions

3. On September 5, 2006, in the Superior Court of the State of California, in and for the County of Placer, Case No. 62-60316, respondent pled nolo contendere to, and was convicted of, a felony violation of Penal Code section 69, knowingly resisting, by force or violence, an executive officer, and a misdemeanor violation of Health and Safety Code section 11550, subdivision (a), being under the influence of a controlled substance. Imposition of sentence was suspended, and respondent was placed on formal probation for three years. She was ordered to spend 150 days in the Placer County Jail and pay fines, penalties, and interest in the total amount of \$1,620. She was also ordered to register as a controlled substance abuser pursuant to Health and Safety Code section 11590. On September 19, 2011, respondent's convictions were vacated, her nolo contendere pleas were withdrawn, new pleas of not guilty were entered, and all charges were dismissed pursuant to Penal Code section 1203.4, subdivision (a).

4. The factual basis for respondent's convictions arose out of her arrest by the Roseville Police Department on May 16, 2006. Her family called the police because she was behaving erratically, and they suspected she was under the influence of a controlled substance. Respondent resisted the police officer's efforts to handcuff her by pulling her arm away from him. Once respondent was handcuffed and placed in the back of a patrol car, the officer had to call for additional units because respondent continued to resist the officer's efforts to transport her to jail and banged her head against the plexiglass window that separates the driver's area of the patrol car from the passenger area.

5. On September 21, 2006, in the Superior Court of the State of California, in and for the County of Placer, Case No. 62-63666, respondent pled nolo contendere to, and was convicted of a misdemeanor violation of Business and Professions Code section 4149, unlawful possession of a hypodermic needle. Imposition of sentence was suspended, and respondent was placed on informal probation for three years. She was ordered to pay fines, fees, and assessments in the total amount of \$160. On September 19, 2011, respondent's conviction was vacated, her nolo contendere plea was withdrawn, a new plea of not guilty was entered, and all charges were dismissed pursuant to Penal Code section 1203.4, subdivision (a).

6. The factual basis for respondent's conviction arose out of her arrest by the Placer County Sheriff's Department on September 15, 2006. Respondent's parents had called the Sheriff's Department because she was walking around their home naked and behaving erratically. They suspected their daughter was under the influence of a controlled substance. Respondent's mother found a hypodermic needle in respondent's belongings.

7. On November 29, 2011, in the Superior Court of the State of California, in and for the County of Sacramento, Case No. 11T06026, respondent pled nolo contendere to, and was convicted of, a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving a motor vehicle with a blood alcohol content of .08 percent or greater. She also admitted that she drove with a high blood alcohol content in violation of Vehicle Code section 23578. Imposition of judgment and sentence was suspended, and respondent was placed on informal probation for three years. She was ordered to spend 48 hours in the Sacramento County Jail and pay fines, penalties, and interest in the total amount of \$2,286.15, \$95.05 of which was stayed pending revocation of probation. She was also ordered to enroll in and complete the High Blood Alcohol 6-month Program.

8. The factual basis for respondent's conviction arose out of her arrest by the California Highway Patrol on November 4, 2011. Her blood alcohol content was .18/.18 percent.

Factors in Aggravation, Mitigation, and Rehabilitation

9. Respondent is 25 years old and currently works for Prima Terra Inc. as a real estate transaction coordinator, legal assistant, and short sale coordinator. She does not have a college degree, but is currently working towards obtaining her Associate of Arts degree.

10. Respondent talked about her past drug history openly and admitted that she was a "drug addicted teen." However, she repeatedly stated that she is no longer the person she was when she was using illegal drugs. After her second drug-related conviction in 2006, she was admitted to a six-month drug treatment program, the first half of which was an in-patient program. She attended both group and individual counseling on a regular basis throughout the six-month program.

11. Respondent explained she did not believe she was "overly intoxicated" the night she was arrested for drunk driving. She was returning from a concert, where she consumed two or three alcoholic drinks. After her arrest, she made the decision to stop drinking, and she considers November 4, 2011, to be her sobriety date. That is also the day on which she attended her first Alcoholics Anonymous (AA) meeting. She continues to attend meetings five to six times each week. She has worked through the entire 12-step program, but continues to work on some of the steps again. She has a sponsor and sponsors others. Respondent completed the High Blood Alcohol 6-month Program a few weeks before the hearing.

12. Respondent's father, Edward P. Haneffant, testified on her behalf. He made the difficult decision to call law enforcement both times respondent was arrested in 2006. Mr. Haneffant has watched respondent initially deny any responsibility for her drug and drinking problems and then finally accept responsibility for both. He testified proudly about the compassion he has seen respondent display towards other recovering drug addicts and alcoholics as she helps them through their addictions, as well as clients who are on the verge of losing their homes to foreclosure.

13. Respondent also introduced character reference letters from her former counselor for the High Blood Alcohol 6-month Program, a former real estate broker for whom she previously worked, and the president and a broker of Prima Terra Inc., her current employer. None of the authors expressed any knowledge of the extent of respondent's drug and alcohol use or criminal convictions. Therefore, each of the letters were given little weight in assessing respondent's rehabilitation. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.2d 933, 940 ["If the character witnesses were not aware of the extent and seriousness of petitioner's criminal activities, their evaluations of his character carry less weight."])

14. The Department has adopted criteria for assessing an applicant's rehabilitation since committing the crimes underlying the convictions for which it seeks to deny an application for licensure. One such criterion which is relevant here is the passage of at least two years since the most recent conviction, or more if there are multiple convictions for crimes that are substantially related to the qualifications, functions, or duties of a real estate licensee. (Cal. Code of Regs., tit. 10, § 2911, 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."])

Respondent has been convicted of four crimes which, as discussed below, are substantially related to the qualifications, functions, or duties of a real estate licensee. Her most recent conviction occurred less than one year ago, and she has more than two years remaining on her criminal 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].)

15. As discussed below, cause exists to deny respondent's application. When all relevant evidence is considered, there has not been sufficient time since each of respondent's convictions to adequately assess her rehabilitation and fitness for licensure. 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 application for a real estate salesperson license should be denied.

LEGAL CONCLUSIONS

1. An application for a real estate license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 480, subd. (a)(1); 10177, subd. (b).) Respondent has been convicted of four separate crimes as discussed in Factual Findings 3, 5, and 7. Her convictions for resisting an executive officer (Factual Finding 3), being under the influence of a controlled substance (*Ibid*), and unlawfully possessing a hypodermic needle (Factual Finding 5) are each substantially related in that each constituted the "doing of an unlawful act with . . . the intent or threat of doing substantial injury to the person or property of

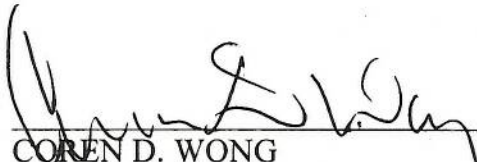
another.” (Cal. Code of Regs., tit. 10, § 2910, subd. (a)(8).) Her drunk driving conviction (Factual Finding 7), in conjunction with her convictions for being under the influence of a controlled substance and unlawful possession of a hypodermic needle, is substantially related in that she had multiple convictions involving the consumption or use of alcohol or drugs and one involved her drinking and driving. (Cal. Code of Regs., tit. 10, § 2910, subd. (a)(11).)¹ And all of her convictions considered together are substantially related because they constitute “conduct which demonstrates a pattern of repeated and willful disregard of law.” (Cal. Code of Regs., tit. 10, § 2910, subd. (a)(10). Therefore, each of respondent’s convictions constitutes separate cause for discipline pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), individually and collectively.

2. For the reasons discussed in Factual Findings 14 and 15, respondent did not establish sufficient rehabilitation 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 application for a real estate salesperson license is denied.

ORDER

Respondent Carmen Maria Haneffant’s application for real estate salesperson license is DENIED.

DATED: July 10, 2012


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

¹ Driving drunk undoubtedly constitutes the “doing of an unlawful act with . . . the intent or threat of doing substantial injury to the person or property of another.” (Cal. Code of Regs., tit. 10, § 2910, subd. (a)(8); see, *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 4th 757, 770 [“Alcohol consumption quickly affects normal driving ability, and driving under the influence threatens personal safety and places the safety of the public in jeopardy.”]) However, the Department has expressed its determination that a single drunk driving conviction alone is not substantially related to the qualifications, functions, or duties of a real estate licensee with its adoption of California Code of Regulations, title 10, section 2910, subdivision (a)(11).

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