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FILED

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

SEP 05 2017

BUREAU OF REAL ESTATE

By B. Nicholas

In the Matter of the Application of	)	CalBRE No. H-6534 SAC
	)	
MOJGUN MIZANI,	)	OAH No. 2017050157
	)	
Respondent.	)	

DECISION

The Proposed Decision dated July 28, 2017, 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) of the Government Code, the following corrections are made to the Proposed Decision:

Page 1, Paragraph 2, Line, 1, is corrected to read:

"...Bureau of Real Estate...".

The application for a real estate salesperson license is denied. The earliest date on which the applicant may reapply for a license is one year from the effective date of this Decision. If and when application is again made for this license, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 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 26 2017**

IT IS SO ORDERED 8/31/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

MOJGUN MIZANI,

Respondent.

No. H-6534 SAC

OAH No. 2017050157

PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, State of California, Office of Administrative Hearings (OAH), heard this matter on July 6, 2017, in Oakland, California.

Real Estate Counsel Kyle Jones, ^{Bureau}Department of Real Estate, represented complainant Tricia Parkhurst, Supervising Special Investigator, Bureau of Real Estate (the bureau), Department of Consumer Affairs (department), State of California.

Respondent Mojgun Mizani appeared at the proceeding, but she was not otherwise represented.

The record was held open to afford an opportunity to respondent to provide copies of documents, to which reference was made at the hearing, but facsimiles of such papers were not available at the proceeding. On July 7, 2017, OAH received from respondent copies of seven documents and one digital image of an award received by respondent. Those items were marked as exhibits "A" to "G," and received as administrative hearsay. On July 10, 2017, OAH received from Real Estate Counsel Jones a letter, which identified the documents and an image that had been served upon complainant following the hearing date. The letter by the real estate counsel was marked as exhibit "7," and received as argument.

On July 10, 2017, the parties were deemed to have submitted the matter for decision and the record closed.

FACTUAL FINDINGS

1. On April 19, 2017, Tricia Parkhurst (complainant), in her official capacity as a Supervising Special Investigator for the bureau, made the Statement of Issues against Mojgun Mizani (respondent). The bureau filed the pleading on April 21, 2017.

2. On January 25, 2016, the bureau received respondent's application for a real estate salesperson license. Respondent had signed the application on January 8, 2016.

The application remains pending as the bureau has refused to issue a license to respondent due to her past acts and omissions that appear to disqualify her for licensure.

False and Misleading Information in Application for Licensure

FAILURE TO DISCLOSE PENDING CRIMINAL CHARGES

3. On January 8, 2016, under penalty of perjury that all answers and statements given by her were true and correct, respondent signed an application for licensure as a real estate salesperson (bureau's application). Question 29 of the bureau's application asked: "ARE THERE CRIMINAL CHARGES PENDING AGAINST YOU AT THIS TIME, OR ARE YOU CURRENTLY AWAITING JUDGMENT AND SENTENCING FOLLOWING ENTRY OF A PLEA OR JURY VERDICT?" (Capitalized lettering emphasis in the text.) Respondent checked "no" on the form as her answer to the question. Her response was not true because on June 11, 2015,¹ the District Attorney's Office for San Mateo County had filed in the Superior Court for San Mateo County a felony information alleging respondent had committed two felony offenses, respectively as to, (i) violation of Penal Code sections 664/368, subdivision (d) (theft from elder person or dependent adult), and (ii) violation of Penal Code section 182, subdivision (a)(1) (conspiracy to commit a crime).

By her failure to provide the bureau with truthful and exact information regarding pending criminal charges against her, respondent presented the bureau with incorrect, false or misleading information.

¹ In the superior court's Case Summary for Case No. SC 083380, also on June 11, 2015, a criminal complaint, along with the criminal information, was filed; a preliminary hearing was waived; and, a bail bond in the amount of \$75,000 was filed on respondent's behalf. On June 26, 2015, respondent's fingerprint from was filed; respondent was recorded as present when a felony arraignment began; the arraignment was continued to a later date; and respondent was present when the superior court ordered her to return for further proceedings. On July 17, 2015, respondent was present when the superior court resumed the proceedings in the arraignment where respondent's new lawyer, named "Samara," made an appearance; respondent entered a not guilty plea to all counts in the felony information/criminal complaint; and, respondent was present when the superior court ordered her to return for further proceedings. Moreover, nearly two years before the felony complaint, law enforcement officers in 2013 apprehended respondent after conducting an investigation into her acts as a "personal banker" with Chase. As early as mid-September 2013, Chase Bank placed respondent on leave and then terminated her employment due to the police investigation into respondent's role in a scheme involving financial elder abuse. And, more likely than not when she hired a lawyer in September 2013 for that law professional to interact with the law enforcement officers, respondent was aware that criminal charges were pending or impending that would involve serious felony charges to be brought against her.

4. Respondent's failure in January 2016 to disclose the pending criminal charges against her indicates that she attempted to procure a real estate salesperson license by fraud, misrepresentation, or deceit, or that she made a material misstatement of fact in the application for licensure.

Record of Criminal Convictions

A. APRIL 2016 CONVICTION – ATTEMPTED THEFT FROM ELDER OR
DEPENDENT ADULT

5. On April 22, 2016, in case number SC083380A of the California Superior Court for San Mateo County, on a plea of nolo contendere, respondent was convicted of violating Penal Code sections 664/368, subdivision (d) (attempted theft from an elder or dependent adult), a misdemeanor.

The crime for which respondent was convicted in April 2016 bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee.

6. On April 22, 2016, the superior court placed respondent on summary probation for a two-year period. (The superior court's record specifies an "End Date" for the probation as April 21, 2018.) The superior court required respondent to complete 250 hours of public service labor as part of the probation's terms and conditions. Also, the superior court ordered respondent to pay \$235 as fines and fees. And, respondent was ordered to obey all laws.

7. The facts and circumstances of respondent's criminal conduct, which led to her conviction during April 2016, are best described in the felony information, dated in June 2015, and a law enforcement felony report, dated August 10, 2013.

While working as a personal banker at the Chase Bank in Menlo Park, California, in approximately 2010, respondent gained the acquaintance of an elderly woman named Elizabeth P. In time as Elizabeth P. grew older she turned to respondent for assistance beyond her banking needs. Elizabeth P. had neither children nor grandchildren.

In approximately 2013, respondent was instrumental in hiring for Elizabeth P.'s assistance an in-home care provider named Sharon F., who was to be paid \$30 per hour over three days each week for a weekly fee of \$270. In time respondent learned that Sharon F. took advantage of Elizabeth P. by unilaterally changing the aforementioned pay rate to \$10,000 per month on a notion that Sharon F. was to offer "24/7" service to the elderly woman. Sharon F. never provided round-the-clock services, although she took a sizable amount of money from Elizabeth P., including \$7,220 taken by Sharon F. during July 2013 alone. Although respondent, as the elderly woman's personal banker knew or should have known about the excessive fees taken by Sharon F., respondent did not notify law enforcement officials or county social services agencies about the apparent financial elderly abuse of Elizabeth P. by the in-home care aide.

In late July 2013, respondent made an inquiry with the San Mateo County Bar Association for the name of an Estate Planning lawyer. (The local bar association recorded her inquiry about the desire to hire an attorney specializing in Wills, Trusts and Estate Planning as coming from respondent while claiming to be the granddaughter of Elizabeth P.) The bar association gave respondent the names of several lawyers, and respondent selected a lawyer named Gabe Zohar to provide specialized legal services for Elizabeth P. Respondent wrote a check \$1,500 from Elizabeth P.'s bank account to pay the retainer fee of Attorney Zohar. At the time, Elizabeth P. was 90 years of age.

In time Attorney Zohar prepared documents for Elizabeth P. including: a Living Trust document naming respondent as Trustee and indicating respondent and Sharon F. were to receive equal shares of the elderly woman's estate on the death of Elizabeth P.; a Will for Elizabeth P. nominating respondent as the Executor of the Will; a General Assignment of Property listing respondent as the recipient of all property of Elizabeth P.; and an Advanced Health Care Directive appointing respondent as the agent to make health care decisions on behalf of Elizabeth P.

A local social worker learned of the unethical practices of Sharon F. and law enforcement officers arrested Sharon F., who gave an account of the plan whereby she and respondent were to become the joint beneficiaries to the estate of Elizabeth P. After her arrest, Sharon F. expressed her view that "it was wrong that [respondent] was going to get the Power of Attorney" for Elizabeth P. Then, law enforcement officers focused upon respondent's acts. Through the police investigation, respondent was found to have gained the potential for acquiring substantial financial interests in the estate of the elderly woman.

At the time, the 90-year-old woman held with Chase Bank investment accounts and a bank account holding more than \$100,000 in cash, but her San Mateo County residence, which had no mortgage indebtedness, was valued at a "few million dollars."

In the August 10, 2013, report, the law enforcement officer recommended that respondent be subject to criminal prosecution for violation of Penal Code sections 664/386, subdivision (e) (theft by a caretaker of a dependent or elderly adult. The theory of the contemplated prosecution turned upon 90-year-old Elizabeth P. trusting respondent, who had assisted the elderly women in paying bills through her position as the elderly woman's personal banker. And the law enforcement officer perceived that respondent helped Elizabeth P. in "making daily self-care decisions," and that respondent was aware of certain actions by Sharon F., as the in-home care provider. Further, the law enforcement officers seized upon the fact that respondent had terminated the employment of one caretaker and hired another in-home care provider for Elizabeth P.

B. MAY 2003 CONVICTION – PETTY THEFT

8. On May 7, 2003, in case number CC303083 of the Superior Court for the County of San Mateo, respondent was convicted of violating Penal Code sections 484/488 (petty theft), a misdemeanor.

The crime for which respondent was convicted in May 2003 bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee.

9. The facts and circumstances of respondent's criminal conduct, which related to the May 2003 conviction, occurred over an alleged one-month period between December 1 2002 and December 28, 2002. Over that period of time, while a store employee, along with another person, respondent devised a scheme to unlawfully exchange merchandise from a Macy's Department Store for money and gift cards having a value exceeding \$400.

10. As a consequence of the May 2003 conviction, the superior court placed respondent on court (informal) probation for a term of three years. The court directed respondent to pay fines and fees of approximately \$400. Also, the superior court ordered respondent to spend 20 days in confinement through the Weekend Work Program, which was set to commence on June 14, 2003.

Matters in Mitigation and Respondent's Background

11. Currently, respondent is 34 years old, and she projects herself as being a very intelligent and clever individual.

12. In 2001, along with her parents and two sisters, respondent immigrated to the United States of America from Iran. Respondent had graduated from a high school in Iran in 2000.

13. Respondent has always resided in a house belonging to her parents. Currently, her parents, respondent's younger sister, and respondent make up the household situated in a house in San Jose.

14. In 2003, respondent graduated from West Valley Community College with an Associate of Arts degree. And in 2007, San Jose State University awarded respondent a Bachelor of Arts degree in Marketing.

15. When the events arose that led to her recent conviction for attempted theft from an elderly or dependent person, respondent had been employed by Chase Bank in the capacity of "personal banker." In addition to opening bank accounts, respondent gave individual service to bank customers. Chase Bank first employed respondent in 2009. She worked for Chase Bank until 2014 when she was terminated for violating policies that prohibit bank employees fostering business-like relations with customers outside of the bank's functions and responsibilities.

In 2014, Citi Bank hired respondent into job classification as a personal banker. She remained in that employment until early 2016, which coincides with the date of her recent conviction.

In approximately early 2016, respondent began working for a start-up computer-oriented business named "North Bound." She was employed by that company until approximately May 2016.

Respondent has not been employed since leaving the job with North Bound. She traveled, however, to Iran from August to September 2016. For less than two months (November and December 2016), respondent worked as an administrative assistant at an insurance broker's office belonging to a family friend. And, over the past several months she has performed clerical duties for her father, who is making an application with the Department of Motor Vehicles to open and operate a wholesale used car sales business in the area of Sunnyvale, California.

16. At the hearing of this matter, respondent proclaimed that "on Monday" (that is July 10, 2017), she was scheduled to travel to Amsterdam and then to Iran for an indefinite amount of time. Respondent compellingly expressed that both her grandmother and an aunt were sick, and she was traveling to that country to provide support and care for the two older women. Her best estimate was that she would spend approximately one and one-half months in Iran.

Matter in Extenuation

17. When she committed the petty theft offense in 2002, she was a recent emigrant from Iran. Moreover, she was approximately 18 years of age when she attempted to carry out an unlawful scheme of exchanging store merchandise for cash or gift cards.

Matters in Rehabilitation

18. Respondent's first conviction, which pertains to petty theft, occurred approximately 14 years before the date of complainant's Statement of Issues.

19. On October 17, 2006, for case number CC303083, which pertains to respondent's conviction for petty theft as entered on May 7, 2003, the Superior Court in and for San Mateo County issued an order of expungement (criminal record clearance) under Penal Code section 1204.4.

20. With regard to the April 2016 conviction for attempted theft from an elder or dependent adult, respondent completed the court-ordered 250 hours of community service by late summer 2016. She presented a letter, dated August 8, 2016, by Theresa Lopez of Reaching Out Center, Cathedral of Faith, showing respondent volunteered at the facility's food distribution center over a period of 81.5 hours. And, respondent offered a letter, dated

June 4, 2016, by Tamiko Carrilo of the Festival of Globe Foundation, showing that respondent devoted 170.5 hours towards the organization's annual charity event.

21. At the hearing of this matter, respondent presented an original commendation plaque, which was presented to her at a national convention of employees of Chase Bank. The plaque designated respondent as being an excellent bank employee.

22. At the hearing of this matter, respondent presented five letters² from persons who respect and admire respondent. The letters describe respondent as a person having a "great moral character," and an individual who is "trustworthy," and who has "a generous heart." But, none of the letter writers indicate having knowledge of the facts pertaining to respondent's commission of attempted theft from an elderly or dependent adult, where such conduct constitutes financial elder abuse.

Matters that Negatively Impact Upon Respondent's Progress towards Rehabilitation

23. Respondent's recent conviction for attempted theft from an elder or dependent adult occurred one year before the date of the Statement of Issues. And, the conviction occurred approximately three and one-half months after the date respondent filed the application for licensure with the bureau.

24. Respondent remains on probation due to the conviction that occurred in April 2016. The superior court specifically prescribed the "end date" for the term of probation as April 21, 2018, which is approximately nine and one-half months after the date of the hearing for this matter.

25. Respondent made certain claims at the hearing of this matter that suggest that she is not a wholly truthful and candid person. At the hearing of this matter, respondent portrayed the circumstances that underpinned her April 2016 conviction as being grounded upon her acts being misunderstood by both law enforcement investigators and social workers with an agency engaged in battling instances of elder abuse. First, respondent unbelievably asserted at the hearing that before the police questioned her, she did not know that she was a proposed beneficiary to the estate of Elizabeth P. Then respondent testified that she saw no problem with the elderly woman selecting her to receive at least half of the value of the woman's estate after Elizabeth P.'s death. Respondent's unbelievable and disingenuous account constituted an impermissible collateral attack upon the factual basis for her conviction in April 2016.

² A letter, dated August 8, 2016, by Theresa Lopez, of Reaching Out Center, Cathedral of Faith; a letter, dated June 4, 2016, by Tamiko Carrillo, Festival of Globe Foundation; a letter, dated June 23, 2017, by Hamed J. Aflakian, D.C, of Aflakian Chiropractic Corporation; a letter, dated July 5, 2017, by Sanam Madani Finnegan; a letter, dated July 12, 2017, by Paullette Tarvirian.

26. At the hearing of this matter, respondent's representations were not credible when she testified that she failed to disclose the fact of pending criminal charges against her as of January 2016 because she did not comprehend Question 29 on the bureau's application. Respondent was not plausible when she testified that she did not fully appreciate her responsibility to accurately answer the question in the bureau's licensure application. And, respondent was not persuasive at the hearing regarding her explanation that when she completed the application she was not certain about the pending charges against her.

Respondent disingenuously projects an attitude that her failure to disclose pending criminal charges was simply an innocuous oversight or mistake on her part in providing inaccurate, false or misleading responses to the bureau's application.

27. Since the date of her last conviction in April 2016, respondent has not completed formal educational or vocational training courses for economic self-improvement.

28. Other than complying with the superior court's probation order, which required her to complete 250 hours of community service work, respondent did not provide documentary proof that she has had significant and conscientious involvement in community, religious, or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

29. Respondent called no witnesses to the hearing of this matter. No person appeared on respondent's behalf to offer evidence pertaining to respondent's reputation in her community for honesty and integrity. No person came to the hearing of this matter to describe respondent's attitude towards her past criminal actions that led to the convictions mentioned above.

30. By her testimony at the hearing regarding the failure to set out a full disclosure of the pending criminal charges against her in January 2016, respondent showed that she has not progressed in her rehabilitation from her past criminal conduct. She does not, therefore, project a changed attitude of honesty and current personal responsibility measured against her past involvement in a theft scheme against her employer (Macy's) and her participation in a conspiracy to commit financial elder abuse.

Ultimate Finding

31. The weight of the evidence supports complainant's determination that it would not be in the public interest for the bureau to issue respondent a real estate salesperson license, even on a restricted basis.

LEGAL CONCLUSIONS

1. In the absence of a statute to the contrary, the burden of proof is on the applicant for a license or permit. (*Breakzone Billiards v. City of Torrance* (2000) 81

Cal.App.4th 1205, 1224-1225; *Southern California Jockey Club, Inc. v. California Horse Racing Board* (1950) 36 Cal.2d 167, 177.) Accordingly, respondent Mojgun Mizani has the burden of proof in establishing that she has character traits or qualities of honesty, integrity and sobriety required of a real estate professional licensed by the bureau.

2. The standard of proof in this proceeding is a preponderance of the evidence. (Evid. Code, § 115.) "The phrase 'preponderance of evidence' is usually defined in terms of probability of truth, e.g., 'such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.' (BAJI (8th ed.), No. 2.60.)" (1 Witkin, *Evidence, Burden of Proof and Presumptions* § 35 (4th ed. 2000).)

Causes for Denial of Licensure

RECORD OF CRIMINAL CONVICTIONS

3. Business and Professions Code section 480, subdivision (a)(1), provides that the bureau may deny a license on the ground that the applicant has "been convicted of a crime . . . [that] . . . is substantially related to the qualifications, functions or duties of the business . . . for which (an) application is made."

Business and Professions Code section 10177, subdivision (b), establishes that the bureau may deny the issuance of a license to an applicant who has "[e]ntered 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"

4. Criteria for substantial relationship between respondent's past two convictions with the qualifications, functions, or duties of a real estate licensee are grounded in California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (a)(4), and (a)(8).

California Code of Regulations, title 10, section 2910, subdivision (a)(1), establishes a criterion for substantial relationship as: "the fraudulent taking, obtaining, appropriating or retaining of . . . property belonging to another person." When respondent committed the offense of petty theft in 2003 and the crime of attempted theft of an elderly or dependent adult in 2013, she engaged in the fraudulent taking, obtaining, appropriating or retaining of property belonging to another person.

California Code of Regulations, title 10, section 2910, subdivision (a)(4), establishes a criterion for substantial relationship as: "the employment of . . . deceit . . . to achieve an end." When respondent committed the separate crimes of petty theft and attempted theft of an elderly or dependent adult, she employed separate and distinct deceitful schemes to achieve the end of stealing money or merchandise belonging to another.

California Code of Regulations, title 10, section 2910, subdivision (a)(8), sets forth a criterion for substantial relationship as "doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator" Respondent's criminal

conviction records show that she has done unlawful acts with the intent of conferring upon herself financial or economic benefits.

5. Cause exists to deny licensure to respondent under Business and Professions Code section 10177, subdivision (b), together with Code section 480, subdivision (a), by reason of the matters set forth in Factual Findings 5 and 8, along with Legal Conclusions 3 and 4.

FALSE, INCOMPLETE OR MISLEADING RESPONSES ON APPLICATION FOR LICENSURE

6. Business and Professions Code section 480, subdivision (d), provides that the bureau may deny a license on the ground that "the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license."

Business and Professions Code section 10177, subdivision (a), establishes that the bureau may deny the issuance of a license to an applicant who has "procured, or attempted to procure, a real estate license . . . by fraud, misrepresentation or deceit, or by making any material misstatement of fact in an application for a real estate license"

7. Cause exists to deny respondent's application for licensure as a real estate salesperson under Business and Professions Code sections 480, subdivision (d), and 10177, subdivision (a), by reason of the matters set forth in Factual Findings 3, 4 and 26, and Legal Conclusion 6.

CONDUCT CONSTITUTING OR INVOLVING FRAUD, DISHONESTY, DISHONEST DEALINGS, OR DECEIT

8. Business and Professions Code section 480, subdivision (a)(2), provides that the bureau may deny a license on the ground that the applicant had "[d]one any act involving dishonesty, fraud, or deceit with the intent to substantially benefit . . . herself or another, or substantially injure another."

Business and Professions Code section 10177, subdivision (j), establishes that the bureau may deny the issuance of a license to an applicant who has "[e]ngaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing."

9. Cause exists to deny respondent's application for licensure as a real estate salesperson under Business and Professions Code sections 480, subdivision (a)(2), and 10177, subdivision (j), by reason of the matters set forth in Factual Findings 4, 7, 9, 25 and 26, and Legal Conclusion 8.

Other Matters

10. Respondent was not credible at the hearing of this matter when she asserted she was not culpable for commission of the offense for which she was convicted. In both her communication with the bureau and her testimony at the hearing, respondent unpersuasively asserted that the essence of her involvement with events that “appeared” to suggest elder abuse was a misunderstanding on the part of law enforcement investigators. Her representations exist as an impermissible collateral attack against the basis of the facts upon which the superior court determined respondent to be guilty of the crime of attempted theft of an elder or dependent adult. Respondent has a record of criminal conviction to which she willingly entered a nolo contendere plea less than 15 months before the date of the hearing in this matter.

A plea of nolo contendere admits all matters essential to the conviction. (*People v. Arwood* (1985) 165 Cal.App.3d 167.) In April 2016, respondent entered a plea of nolo contendere to attempted theft of an elderly or dependent adult. Penal Code § 368 defines, in part, that “[a]ny person who . . . *willfully causes* or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable . . . mental suffering, or . . . *willfully causes or permits* the person or health of the elder or dependent adult to be injured . . . is punishable by imprisonment . . .” (Emphasis added.) Under California Penal Code Section 368 PC, the crime of elder abuse can involve a variety of criminal behavior that is targeted at people who are 65 years old or older. Elder abuse can involve not only physical or emotional abuse directed towards the elderly, but also financial exploitation. The basis of the conviction, therefore, to which respondent was required to enter a “voluntary” plea, has an element of willfulness relative to the commission of acts of financial exploitation of an elderly woman.

In an administrative proceeding, a respondent cannot challenge the validity of a prior conviction. (*Thomas v. Dept. of Motor Vehicles* (1970) 3 Cal.3d 335; *Matanky v. Board of Medical Examiners* (1979) 79 Cal.App.3d 293.) By reason of Factual Finding 25, respondent’s testimony at the hearing of this matter constituted impermissible collateral attack on the recent conviction.

11. Matters in mitigation, respondent’s background, the matter in extenuation, and matters in rehabilitation as set forth in Factual Findings 11 through 22 have been considered in making the following order.

12. Further to the above, too little time has elapsed since the date of respondent’s recent conviction and superior court’s imposition of terms of probation for the bureau to consider respondent’s full rehabilitation. *In re Gossage* (2000) 23 Cal.4th 1080, 1104-1105, establishes, among other things, that from the standpoint of a licensing agency’s regulatory oversight of licensees, or consideration of an application for licensure, rehabilitation from the adverse implication of a criminal conviction cannot begin to be accurately assessed until the licensee is beyond the restrictions of criminal probation and the prospect of incarceration no longer looms over the head of the licensee or applicant for licensure. In this matter,

respondent will not be released from probation for the criminal convictions until mid-April 2018. Hence, a rational assessment of respondent's progress towards rehabilitation cannot take place until a point in the future. Because of the recent date of respondent's conviction, an inadequate amount of time has elapsed for the bureau to reasonably determine that respondent has been rehabilitated from her past criminal offense.

13. In accordance with California Code of Regulations, title 10, section 2911, respondent has not successfully attained the constellation of positive traits in accordance with the bureau's criteria for rehabilitation from the record of convictions. Respondent must conscientiously pursue life as a mature, restrained and law-abiding individual for a few more years in order to attain the level of demonstrable personal integrity and good character necessary to secure a real estate salesperson license as issued through the bureau. Contrary to respondent's utterances that she has overcome her criminal past, her acts of deceit and concealment in communication with the bureau, as indicated by false statements on the bureau's application and her letter of explanation, do not show that she is a fully rehabilitated person at this point in time.

Respondent's use of an unbelievable excuse for filing a false response on the application for licensure indicates a lack of a changed attitude from the mind-set of self-delusion and misdirected blame. "The [bureau] has developed 14 criteria to be used to evaluate rehabilitation of an applicant for a license who has committed a crime. (Cal. Code Regs., tit. 10, § 2911). These criteria attempt to gauge whether the applicant has changed so that a repeat of her criminal behavior is unlikely. Of the many criteria, arguably the most important in predicting future conduct is subdivision (n): 'Change in attitude from that which existed at the time of the conduct in question.'" (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 148-149.)

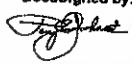
A disposition for full disclosure, even of the most unpleasant information, is an integral part of the culture of the real estate sales profession. But, respondent's application for licensure indicates her disposition to conceal, rather than to disclose, important information. In the industry of real estate licensed professionals, the real estate commissioner may discipline a licensed real estate professional for failure to disclose even if the real estate licensee was not intentionally fraudulent or dishonest, and it is immaterial that the real estate professional received no advantage from his failure to disclose. (*Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1994) 22 Cal.App.4th 1814, 1822.) Respondent's material misrepresentation on the application for licensure precludes a determination that she has attained rehabilitation and that she possesses the character traits to possess a real estate salesperson license.

14. The matters that reflect that respondent has not attained rehabilitation, as set forth in Factual Findings 23 through 31, have been considered in making the following order.

ORDER

Respondent Mojgun Mizani application for a real estate salesperson license is denied.

DATED: July 28, 2017

DocuSigned by:

28DB5AD99FE7453

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings