

File

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

FILED

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NOV 15 2018

In the Matter of the Application of:

LAURA LYNN BRANDON,

Respondent.

} DRE No. H-6644 SAC

} OAH No. 2018080137

DEPARTMENT OF REAL ESTATE

By *K. Krupp*

DECISION

The Proposed Decision dated October 12, 2018, 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:

1. Page 8, Legal Conclusions 4, Sentence 1 is corrected to read as follows:
“...restricted real estate broker license.”

2. Page 8, Order 1, Sentence 1, is corrected to read as follows:
“...real estate broker license is DENIED; provided, however, a restricted real estate broker license...”

The application for a real estate broker license is denied, but the right to a restricted real estate broker license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department 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 Department'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.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on DEC 06 2018.

IT IS SO ORDERED November 14, 2018

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, appearing to read "Daniel J. Sandri", is written over a horizontal line.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

LAURA LYNN BRANDON,

Respondent.

Case No. H-6644 SAC

OAH No. 2018080137

PROPOSED DECISION

This matter was heard before Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 2, 2018, in Sacramento, California.

Kyle T. Jones, Counsel for the Department of Real Estate (Department), represented Tricia D. Parkhurst (complainant), a Supervising Special Investigator of the State of California.

Laura Lynn Brandon (respondent) represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on October 2, 2018.

FACTUAL FINDINGS

1. On May 31, 2017, respondent signed and thereafter filed an application for a real estate broker license (application). No license has been issued.
2. On July 19, 2018, complainant made and thereafter filed the Statement of Issues in her official capacity. Complainant seeks to deny respondent's application based on her criminal convictions and discipline imposed on her contactor license.
3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Respondent's Real Estate Salesperson License

4. On January 10, 1989, the Department issued respondent a restricted salesperson license, based on her 1986 conviction for petty theft. Respondent petitioned for, and was granted, an unrestricted license on February 22, 1992. Respondent's license expired in 1996, and was not renewed. On May 25, 2011 and July 18, 2013, the Department denied respondent's application for a plenary real estate salesperson license based on the convictions detailed below. On March 30, 2016, the Department issued respondent a restricted salesperson license, subject to terms and conditions. Respondent was eligible to petition for an unrestricted license in April 2018. No evidence was presented at hearing regarding the status of that license.

Respondent's Criminal Convictions

5. On January 5, 2007, in the Superior Court, Santa Cruz County, in Case No. M35482, respondent was convicted on a plea of guilty of driving with a blood alcohol content of .08 percent or more (DUI), in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on five years of probation. She was ordered to spend five days in the Santa Cruz County Jail and pay fines and fees. She was also ordered to enroll in and complete the First Offender Drinking Driver Program. Respondent completed her criminal probation on January 5, 2012.

The circumstances underlying this conviction occurred on September 2, 2006, when respondent was arrested by the California Highway Patrol in Santa Cruz, California for drunk driving. Her blood alcohol content was .18 percent.

6. On September 3, 2002,¹ in the Superior Court, Sacramento County, Case No. 02F05956, respondent was convicted, on a plea of nolo contendere, of violating Health and Safety Code section 11350, subdivision (a), for unlawful possession of cocaine, a felony. Imposition of sentence was suspended and respondent was placed on formal probation for five years. She was also ordered to spend 90 days in the Sacramento County Jail, but the order was stayed pending her completion of a Proposition 36 drug treatment program. She was required to register as a convicted drug offender pursuant to Health and Safety Code section 11590 and pay fines and fees. Respondent failed to complete the drug treatment program, and her jail sentence was reinstated. The conviction was expunged on September 12, 2013, pursuant to Penal Code section 1203.4.

The circumstances underlying this conviction occurred on July 15, 2002, when respondent's sister-in-law called the sheriff's department out of concern that respondent was attempting to commit suicide. When deputy sheriffs arrived, respondent was speaking

¹ The Statement of Issues misstates this conviction date as October 1, 2002, which was respondent's sentencing date.

irrationally and in a paranoid manner. The deputies found rock cocaine on her person and in her vehicle. Respondent was arrested.

7. On November 27, 2002, in the Superior Court, Sacramento County, Case No. 02F09540, respondent was convicted on a plea of nolo contendere of violating Vehicle Code section 2800.1, subdivision (a), for evading a peace officer, a misdemeanor. Imposition of sentence was suspended, and respondent was placed on informal probation for three years. She was ordered to spend 90 days in the Sacramento County Jail, which was stayed pending her successful completion of a residential drug treatment program at Fair Oaks Recovery Center. Respondent did not complete the treatment program, and was remanded to serve the jail sentence on March 4, 2003. This conviction was expunged on September 12, 2013, pursuant to Penal Code section 1203.4.

The circumstances underlying this conviction occurred on November 9, 2002, when a Galt police officer saw respondent driving with no taillights. She was pulled over, but during the stop, she rolled up her windows, and drove away, with the officer in pursuit. She drove erratically from the point of the stop until she arrived at another Galt police officer's home. She refused to exit her vehicle, and was forcibly removed and arrested.

8. On September 10, 2002, in the Superior Court, San Joaquin County, Case No. SM225264A, respondent was convicted, on plea of guilty, of violating Health and Safety Code 11550, subdivision (a) (under the influence of cocaine, a misdemeanor). Imposition of sentence was suspended, and respondent was placed on formal probation for five years. She was referred to a Proposition 36 drug treatment program and ordered to pay fines, penalties, and assessments.

On April 1, 2003, respondent was allowed to withdraw her previous guilty plea and her conviction was vacated. The criminal complaint was then amended to allege a misdemeanor violation of Health and Safety Code section 11377, subdivision (a) (unlawful possession of cocaine), and respondent pled nolo contendere to, and was convicted of, the amended charge.

The circumstances underlying this conviction occurred on June 18, 2002, when Stockton Police Department officers responded to a complaint of a suspicious truck. Officers approached the truck, where respondent was inside sleeping, woke her, and noticed an odor of alcohol on her person. The officers searched the vehicle and found rock cocaine residue in a baggy, along with drug paraphernalia. Respondent was arrested.

9. On October 23, 1986, in the Superior Court, Sacramento County, respondent was convicted, on a guilty plea, of a misdemeanor violation of Penal Code section 488, petty theft. No further information was presented at hearing regarding this conviction.

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Discipline by Contractor State License Board

10. Effective July 9, 2018, the Contractor State License Board (CSLB) disciplined respondent's contractor license (General Contracting). Following an administrative hearing in which respondent appeared, the CSLB determined respondent violated Business and Professions Code section 7159 when she failed to include mandatory language in her home improvement contract. Her license is on probationary status until July 2021.

Respondent's Evidence

11. Respondent is currently a real estate salesperson with Keller Williams Realty. She is primarily involved with farm and residential sales in and around Galt. If she were to obtain the broker's license for which she has applied, she would continue her affiliation with Keller Williams Realty.

12. When respondent was 12 years old, her father died. In 1999, respondent's husband committed suicide. She was left with four children to raise and a construction business to run. In her words, she "fell apart." Having been through the pain and grief of losing her father as a young girl, she was re-traumatized, knowing her children had lost their father. All of the convictions she sustained (save the 1986 conviction for petty theft) were in response to the grief she was experiencing after her husband's suicide. She abused drugs and alcohol, and attempted suicide on more than one occasion. She has not used drugs since her last conviction.

13. Respondent's last conviction was in 2007. She was released from probation in 2012, and has not had any criminal activities since. Although she did not present evidence that her convictions were expunged, she stated that all but one have been, and she continues to work to address this. She has taken responsibility for her actions. She admitted she made a lot of mistakes following her husband's death, including her drug use, attempted suicides, and harm to her family. Since then, however, she has made efforts to heal and rehabilitate. She sought individual counseling, went to a grief counseling group, took classes through local resource organizations to help her regroup, and tried to start working again. She has children and grandchildren for whom she strives to be a role model.

14. Respondent volunteers at her church, Calvary Chapel Laguna Creek. She also volunteers for "Heart Change," a workshop that helps people in their grief process. She hosted an event on her ranch for children who had been affected by a classmate's suicide. She found a professional to speak with the students about suicide and grief. The students spent a day on respondent's ranch learning about horses, nature, and artistic expression. She provided all of the students with a book written specifically about how to approach the aftermath of suicide.

15. Respondent continues to operate the construction business that her husband built. The company operates as a general contractor and hires subcontractors to complete the construction work. Respondent explained that CSLB disciplined her license based on her

home improvement contract not having the proper terms. She asserted, however, that the contract contained all the legally required terminology. When specifically questioned about the contract provisions, respondent admitted that the words were not "exactly the same" as the statute requires, and some words should have appeared in bold print or in a particular font size.

Discussion

16. The Department has adopted criteria for determining whether an applicant has been rehabilitated since committing the acts for which denial of licensure is sought. (Cal. Code of Regs., tit. 10, § 2911, subd. (a).) The criteria relevant to respondent are:

(1) The time that has elapsed since commission of the act(s) or offense(s):

(A) The passage of less than two years after the most recent criminal conviction or act of the applicant that is a cause of action in the Bureau's Statement of Issues against the applicant is inadequate to demonstrate rehabilitation.

[¶] ... [¶]

(3) Expungement of criminal convictions.

[¶] ... [¶]

(5) Successful completion or early discharge from probation or parole.

(6) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances and/or alcohol.

(7) Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(8) 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 Bureau action sought.

(9) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

[¶] ... [¶]

(12) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(13) 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 [Department] action sought.

(14) Change in attitude from that which existed at the time of the conduct in question as evidenced by the following:

(A) Testimony and/or other evidence of rehabilitation submitted by the applicant.

(B) Evidence from family members, friends and/or other persons familiar with applicant's previous conduct and with his or her subsequent attitudes and/or behavioral patterns.

17. Respondent's most recent convictions were between 2002 and 2007, with the bulk of them occurring in 2002, which is remote in time. She has had no convictions since 2007, and completed her last probationary term in January 2012. She is working to have all of her convictions expunged.

18. Respondent's testimony was persuasive and credible. Specifically, respondent's testimony that her convictions were a direct result of her inability to handle the grief over losing her husband, that she is committed to helping others who have experienced similar loss, and that she works to be a role model for her children and grandchildren all demonstrate her positive life changes since her last conviction. She admittedly made extremely poor decisions and showed lack of judgment following her husband's suicide, but she took responsibility for her actions and continues to work to make amends. She has relationships with her children and grandchildren, and described a stable home life.

19. Respondent has not recently engaged in educational pursuits, but she has undergone extensive individual counseling and grief counseling. She did not submit character letters or testimony in support of her application. Her commitment to people affected by suicide, her church, and family is commendable, however.

20. Additionally, respondent's approach to the CSLB's license discipline is concerning. The home improvement contract she was using did not have the specific terms required under the law, but she continued to assert that the basis for discipline was unfounded. Real estate brokers must use accurate, legally sound documents and understand the Department's requirements. Respondent's denial of the cause for CSLB discipline leaves doubt as to her ability to do so.

21. The objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment. (See *Fahmy v. MBC* (1995) 38 Cal.App.4th 810, 817.) The Department must be assured that an individual it licenses possesses good judgment and integrity. Respondent's testimony was candid, persuasive, and credible. She accepted responsibility for her criminal actions, and demonstrated she has worked hard to recover and rehabilitate. Because there are concerns regarding respondent's attention to detail and compliance with contract laws, a restricted license is warranted. Based on the evidence, respondent has demonstrated that it would be consistent with the public interest, safety, and welfare to issue her a restricted real estate broker license.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 10177, subdivision (f), an application for a real estate license may be denied if the applicant had a license revoked or suspended by another state agency. Pursuant to Factual Finding 11, complainant established cause for discipline under this code section.

2. An application may be denied based on conduct that constitutes fraud or dishonest dealing. (Bus. & Prof. Code, §§ 480, subd. (a)(2); 10177, subd. (j).) 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); 10177, subd. (b).) The Bureau has set forth criteria to determine whether a conviction is substantially related to the qualifications, functions or duties of a licensee. California Code of Regulations, title 10, section 2910, provides that a conviction will be deemed to be substantially related if it involves:

(a)(1) "[t]he fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person."

[¶] . . . [¶]

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

(a)(11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

3. Respondent's conviction for petty theft and her four drug and alcohol related convictions are substantially related to the qualifications, functions, or duties of a licensee. Cause therefore exists to deny respondent's real estate broker license application pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivisions (b) and (j), pursuant to the convictions detailed in Factual Findings 5 through 10.

4. When all of the evidence is considered, however, and pursuant to Factual Findings 17 through 22, respondent produced sufficient evidence of rehabilitation to justify granting a restricted real estate salesperson license.

ORDER

Respondent Laura Lynn Brandon's application for a real estate salesperson license is DENIED; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license will 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) 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 notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. 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.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two (2) years have elapsed from the date of issuance of the restricted license to respondent.

DATED: October 12, 2018

RECEIVED
Department of Real Estate

OCT 15 2018

Sac Legal

DocuSigned by:
Heather M. Rowan
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HEATHER M. ROWAN
Administrative Law Judge
Office of Administrative Hearings