

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

APR 24 2023

DEPARTMENT OF REAL ESTATE
By

In the Matter of the Application of:)
SHAFIQA SHAFIQ KAKAR EHSAN,)
)
Respondent.)

DECISION

The Proposed Decision dated February 28, 2023, 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 2, Factual Findings 2, Line 4, is corrected to read as follows:
“September 12, 2022” to “October 28, 2022”.

The application for a mortgage loan originator license endorsement 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 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.

This Decision shall become effective at 12 o'clock noon on MAY 15 2023.

IT IS SO ORDERED 4.18.23.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



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

In the Matter of the Application of:

SHAFIQA SHAFIQ KAKAR EHSAN, Respondent

Agency Case No. H-7169 SAC

OAH No. 2022110739

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on January 30, 2023, from Sacramento, California.

Megan Lee Olsen, Counsel, represented Ruth Corral (complainant), Supervising Special Investigator, Department of Real Estate (Department).

Shafiq Shafiq Kakar Ehsan (respondent) appeared on her own behalf.

Evidence was received, the record closed, and the matter was submitted for decision on January 30, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. On November 4, 2021, the Department issued respondent salesperson license number S/02116249. The license is active, in full force, and scheduled to expire on November 3, 2025, unless renewed or revoked.

2. On May 13, 2022, respondent applied to the Department through the Nationwide Mortgage Licensing System and Registry (NMLSR) for an individual mortgage loan originator (MLO) license endorsement. The Department did not issue the endorsement. On September 12, 2022, complainant in her official capacity, filed the Statement of Issues seeking to deny respondent's application based on her felony conviction of grand theft by an employee, agent, or servant, and the underlying conduct. Respondent filed a Notice of Defense and requested a hearing. This hearing followed.

Criminal Conviction

3. On October 20, 2003, in the Superior Court of California, County of Santa Clara, case number CC304292, respondent was convicted, on her plea of no contest, of violating Penal Code sections 484 and 487, subdivision (b)(3) (grand theft by a servant, agent, or employee), a felony. Respondent also pled to a sentencing enhancement under Penal Code section 12022.6, subdivision (a)(1) (amount of loss exceeds \$65,000). The court suspended imposition of sentence and placed respondent on formal probation for five years with conditions that required her, among other things, to pay restitution of \$65,000.

4. The circumstances underlying the conviction occurred in November 2002, when respondent worked as an assistant manager at a retail clothing store. Through video surveillance, loss prevention agents at the store saw respondent give people merchandise, conduct fraudulent returns, and steal cash. Respondent admitted to the police that she stole approximately \$68,000 over the course of her employment.

Respondent's Testimony

5. At hearing, respondent readily admitted her criminal conduct. While working as an assistant manager at the clothing store, she gave away clothes and other merchandise to her friends without making them pay for the items. She does not remember other details but recalls the amount of her theft was less than \$65,000. Rather, she believes it was closer to \$6,000. When the police interrogated her, she spoke to them without an attorney. She eventually became fatigued and confused about the numbers and signed a document stating she stole \$68,000 worth of merchandise. She paid the entire \$65,000 as court-ordered restitution.

6. Respondent regrets her crime. She was a full-time college student at the time with a life goal of becoming a Supreme Court Justice. She "got caught up" in stealing from her employer. She emphasized that the crime occurred 21 years ago. When reflecting on her conduct, it feels to her like she is "looking back on someone else's life," because she cannot believe she behaved that way. She is now a parent of teenagers and has raised them to be honest and responsible.

7. Today, petitioner owns a staging and furniture company. Her husband, brother, and sister-in-law are all real estate agents, and another of her brothers is a real estate broker. She seeks her MLO license endorsement because she believes helping people qualify for loans more closely fits her personality and suits her skill set.

She wants to "make a positive impact on people's lives," and hopes her poor judgment and conduct more than twenty years ago will not hinder her career.

Analysis

8. Petitioner's criminal behavior is well in her past. She is genuinely remorseful for her misconduct and has demonstrated, through more than two decades of lawful behavior, that she can follow the law. She is a licensed real estate agent with no license discipline. She proved her rehabilitation through "sustained conduct, over an extended period of time, that demonstrates [she] is rehabilitated and fit to practice." (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

9. However, one of the statutes on which complainant relies to deny respondent's application is Business and Professions Code¹ section 10166.05, subdivision (b), which provides:

Notwithstanding any other provision of law, the commissioner shall not issue a license endorsement to act as a mortgage loan originator to an applicant unless the commissioner makes all of the following findings:

[¶ . . . ¶]

(b) (1) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign,

¹ All further statutory references are to the Business and Professions Code, unless otherwise stated.

or military court . . . at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

(2) For purposes of this subdivision, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this subdivision or subdivision (c).

10. As a result, despite petitioner's rehabilitation from her prior criminal conduct, her unexpunged felony conviction prevents the Department from granting her an MLO license endorsement. On that basis, the law requires that her application be denied.

LEGAL CONCLUSIONS

1. An applicant for a license bears the burden to prove she should be granted a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) The burden of proof is a preponderance of the evidence (Evid. Code, § 115), which means "more likely than not." (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

Causes for Denial

2. The Real Estate Commissioner shall deny an MLO license endorsement to an applicant who has been convicted of a felony "at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering." (§ 10166.05, subd. (b)(1).) As discussed in Factual Findings 3 and 4, respondent was convicted of grand theft by a servant, agent, or employee for stealing \$65,000 from her employer. Her crime was a felony that involved an act of fraud, dishonesty, a breach of trust, or money laundering. Cause therefore exists to deny her application pursuant to section 10166.05, subdivision (b)(1).

3. The Real Estate Commissioner shall deny an MLO license endorsement unless the commissioner finds that "[t]he applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the article." (§ 10166.05, subd. (c).) As discussed in Factual Findings 8 through 10, respondent proved that she is rehabilitated from her prior criminal conduct, has financial responsibility, character, and general fitness, and would operate honestly, fairly, and efficiently with an MLO license endorsement. Therefore, no cause exists to deny her application pursuant to section 10166.05, subdivision (c).

4. The Real Estate Commissioner may deny an MLO license endorsement if the applicant fails to meet the requirements of section 10166.05. (§ 10166.051, subd. (b).) As discussed in Factual Findings 3 and 4, respondent does not meet the requirements to receive an MLO license endorsement under section 10166.05, subdivision (b)(1), because she was convicted of a felony that involved an act of fraud,

dishonesty, a breach of trust, or money laundering. Cause therefore exists to deny her application under section 10166.051, subdivision (b).

5. The Real Estate Commissioner may deny an MLO license endorsement if the applicant has a personal history that includes "any liens or judgments for fraud, misrepresentation, dishonest dealing." (Cal. Code Regs., tit. 10, § 2758.3, subd. (a)(1).) As discussed in Factual Findings 3 and 4, respondent's conviction was a judgment against her for dishonest dealing. Cause therefore exists to deny her application pursuant to California Code of Regulations, title 10, section 2758.3, subdivision (a)(1).

6. Pursuant to California Code of Regulations, title 10, section 2945.3:

- A felony conviction at any time in the applicant's personal
- history where such felony involved an act of fraud,
- dishonesty, a breach of trust, or money laundering is cause
- for denial of the application. These restrictions constitute a
- ban on the real estate licensee's ability to apply for a license
- endorsement. These restrictions are not subject to
- mitigation or rehabilitation.

7. As discussed in Factual Findings 3 and 4, respondent was convicted of a felony that involved an act of fraud, dishonesty, a breach of trust, or money laundering. Cause therefore exists to deny her application pursuant to California Code of Regulations, title 10, section 2945.3.

ORDER

Respondent Shafiq Shafiq Kakar Ehsan's application for mortgage loan originator license endorsement is DENIED.

DATE: February 28, 2023


Sean Gavin (Feb 28, 2023 12:14 PST)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings