

FILED

MAY 10 2004

DEPARTMENT OF REAL ESTATE

By Jean Armenta

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
ARLENE CONCEPCION MORTELA-VELEZ,) NO. H-7460 SF
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On November 10, 1997, a Decision was rendered herein revoking the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on March 4, 1998, and Respondent has operated as a restricted licensee since that time.

On May 15, 2003, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence submitted in support thereof. Respondent has failed to

1 demonstrate to my satisfaction that she has undergone sufficient
2 rehabilitation to warrant the reinstatement of her unrestricted
3 real estate salesperson license at this time.

4 The burden of proving rehabilitation rests with the
5 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A
6 petitioner is required to show greater proof of honesty and
7 integrity than an applicant for first time licensure. The proof
8 must be sufficient to overcome the prior adverse judgment on the
9 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d 395).

10 The Department has developed criteria to assist in
11 evaluating the rehabilitation of an applicant for reinstatement
12 of a license. Among the criteria relevant in this proceeding
13 are:

14 (b) Restitution to any person who has suffered monetary
15 losses through "substantially related" acts or omissions of the
16 applicant. Respondent has failed to pay restitution in the
17 amount of \$9,600 to San Benito County as a result of Respondent's
18 acts in the underlying criminal conviction. Consequently,
19 Respondent has failed to make full restitution to persons who
20 have suffered monetary losses as a result of Respondent's acts.

21 (n) Change in attitude from that which existed at the
22 time of the conduct in question as evidenced by any or all of the
23 following:

24 (1) Testimony of applicant.

25 (2) Evidence from family members, friends or
26 other persons familiar with applicant's previous conduct and with
27 his subsequent attitudes and behavioral patterns.

1 (3) Evidence from probation or parole officers or
2 law enforcement officials competent to testify as to applicant's
3 social adjustments.

4 (4) Evidence from psychiatrists or other persons
5 competent to testify with regard to neuropsychiatric or emotional
6 disturbances.

7 In response to a question in the petition application,
8 "Restitution paid in full", Respondent answered "Yes". Respondent
9 failed to disclose in her petition application that she had
10 failed to make restitution of \$9,600 to San Benito County.

11 Respondent's concealment of facts and lack of candor,
12 demonstrate that Respondent has not changed her attitude from
13 that which existed at the time the disciplinary action was taken
14 in this matter.

15 Given the violations found and the fact that Respondent
16 has not established that she has complied with Sections 2911 (b)
17 and (n) of Title 10, California Code of Regulations, I am not
18 satisfied that Respondent is sufficiently rehabilitated to
19 receive an unrestricted real estate salesperson license.

20 NOW, THEREFORE, IT IS ORDERED that Respondent's petition
21 for reinstatement of her real estate salesperson license is denied.

22 This Order shall be effective at 12 o'clock noon on
23 June 1, 2004.

24 DATED: January 23, 2004

25 Real Estate Commissioner

26 By:

John R. Liberator
JOHN R. LIBERATOR
27 Chief Deputy Commissioner

FILED
NOV 12 1997

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Shelly Elzy

* * *

In the Matter of the Accusation of)
ARLENE CONCEPCION MORTELA-VELEZ)
Respondent.)
_____)

NO. H-7460 SF

OAH NO. N-1997070118

DECISION

The Proposed Decision dated October 10, 1997, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 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 December 2, 1997.

IT IS SO ORDERED 11/10, 1997.

JIM ANTT, JR.
Real Estate Commissioner

Jm Antt Jr

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	No. H-7460 SF
ARLENE CONCEPCION MORTELA-VELEZ,)	
)	OAH No. N 1997070118
Respondent.)	
_____)	

PROPOSED DECISION

This matter was heard before Mary-Margaret Anderson, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California on September 10, 1997.

The complainant was represented by Larry A. Alamao, Attorney in Charge, Department of Real Estate.

Respondent Arlene Concepcion Mortela-Velez was present.

FINDINGS OF FACT

I

The accusation was made by Les R. Bettencourt, in his official capacity as a Deputy Real Estate Commissioner of the State of California.

II

Arlene Concepcion Mortela-Velez ("Respondent") is presently licensed and/or has licensing rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code") as a real estate salesperson.

III

On August 6, 1996, in the Superior Court of the State of California, County of San Benito, Respondent was convicted by her plea of nolo contendere of a misdemeanor violation of section 10980 of the California Welfare and Institutions Code (obtaining aid by misrepresentation).

Respondent was sentenced as follows: three years probation, 45 days in jail or 200 hours community service, counseling and \$670.00 in fines and assessments. Restitution had been made in full prior to sentencing.

IV

The crime of which Respondent was convicted involves moral turpitude and is substantially related to the duties, qualifications or functions of a real estate licensee.

V

Respondent was an AFDC (Aid to Families with Dependent Children) and food stamps recipient in San Benito County beginning in 1993. To receive the aid, Respondent was required to submit monthly reports signed under penalty of perjury.

For a three month period during 1994 Respondent failed to correctly report all earnings received in her monthly reports. The result was an overpayment of \$1,683.00.

VI

When confronted with the erroneous reports, Respondent admitted responsibility. She told the investigator that she wanted to get caught up with her bills.

In her testimony, Respondent stated that she was under extreme financial pressure at the time of the false reports. She and her husband were experiencing marital problems, and he was not working. One of her children was very sick, and she could not afford medical insurance. Respondent was having a very difficult time making ends meet and providing for her two children.

VII

Respondent has a degree in accounting and is currently employed in business office management. She is working as a real estate salesperson on a part time basis, but has no open transactions. In her last transaction she represented a buyer in a home purchase.

VIII

Respondent was extremely remorseful regarding the conduct that led to her conviction. She stated that she would never again attempt to solve problems via dishonest methods.

DETERMINATION OF ISSUES

I

Cause for disciplinary action against Respondent exists pursuant to Business and Professions Code sections 490 and 10177(b) by reason of the matters set forth in Findings III and IV.

II

Only one year has passed since Respondent's conviction, although it has been two years since her arrest. The evidence supports Respondent's position that the welfare fraud was an aberration in an otherwise law abiding life. When the totality of the situation is examined, it does not appear contrary to the public interest to allow Respondent to retain her real estate salesperson license on a restricted basis.

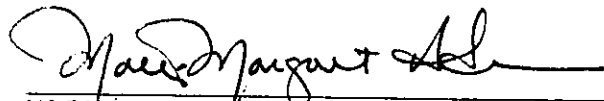
ORDER

All licenses and licensing rights of Respondent Arlene Concepcion Mortela-Velez under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until 2 years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: October 10, 1997



MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

FILED
JUL 1 1997

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Shelly Ely

In the Matter of the Accusation of

ARLENE CONCEPCION MORTELA-VELEZ,

Case No. H-7460 SF

OAH No. _____

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

The Office of Administrative Hearings, World Savings Tower,

1970 Broadway, Second Floor, Oakland, California 94612

on Wednesday -- September 10, 1997, at the hour of 2:30 PM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: July 1, 1997

By Larry Alamao
LARRY A. ALAMAO Counsel

1 DEIDRE L. JOHNSON, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
MAY - 2 1997
DEPARTMENT OF REAL ESTATE

By Shelly Ely

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 ARLENE CONCEPCION MORTELA-VELEZ,)
13 Respondent.)
14 _____)

NO. H-7460 SF

ACCUSATION

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against ARLENE CONCEPCION MORTELA-VELEZ, is informed
18 and alleges as follows:

19 I

20 ARLENE CONCEPCION MORTELA-VELEZ (hereafter Respondent)
21 is presently licensed and/or has license rights under the Real
22 Estate Law, Part 1 of Division 4 of the California Business and
23 Professions Code (hereafter the Code) as a real estate
24 salesperson.

25 II

26 The Complainant, Les R. Bettencourt, a Deputy Real
27 Estate Commissioner of the State of California, makes this



1 Accusation against Respondent in his official capacity and not
2 otherwise.


3 III

4 On or about August 6, 1996, in the Superior Court of
5 California, County of San Benito, Respondent was convicted of
6 violation of Section 10980 of the California Welfare and
7 Institutions Code (AID BY MISREPRESENTATION) as a misdemeanor, a
8 crime involving moral turpitude and which is substantially related
9 under Section 2910, Title 10, California Code of Regulations to
10 the qualifications, functions or duties of a real estate licensee.

11 IV

12 The facts alleged above constitute cause under Sections
13 490 and 10177(b) of the Code for suspension or revocation of all
14 licenses and license rights of Respondent under the Real Estate
15 Law.

16 WHEREFORE, Complainant prays that a hearing be conducted
17 on the allegations of this Accusation and that upon proof thereof
18 a decision be rendered imposing disciplinary action against all
19 licenses and license rights of Respondent, under the Real Estate
20 Law (Part 1 of Division 4 of the Business and Professions Code)
21 and for such other and further relief as may be proper under other
22 provisions of law.

23
24 
25 LES R. BETTENCOURT
Deputy Real Estate Commissioner

26 Dated at San Francisco, California,
27 this 17th day of April, 1997