

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
MAY - 2 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of)
NATASHA VALENTINA WILSON-KUYKENDALL,)
Respondent.)

NO. H-8274 SF
OAH NO. N-2002110457

DECISION

The Proposed Decision dated April 16, 2003, 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, 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.

This Decision shall become effective at 12 o'clock noon
on MAY 23, 2003.

IT IS SO ORDERED April 29, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

NATASHA VALENTINA WILSON-
KUYKENDALL

Respondent.

Case No. H-8274 SF

OAH No. N 2003020221

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter on March 19, 2003, in Oakland, California.

James L. Beaver, Counsel, represented the complainant Les R. Bettencourt, Deputy Real Estate Commissioner of the State of California.

Thomas Swihart, Attorney at Law, 2039 Shattuck Avenue, Suite 308, Berkeley, California 94704 represented the respondent Natasha Valentina Wilson-Kuykendall, who was present at hearing.

The matter was submitted on March 19, 2003.

FACTUAL FINDINGS

1. Official notice is taken that complainant Les R. Bettencourt made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. On or about July 12, 2002, the Department of Real Estate (Department) received an application for a real estate salesperson license from Natasha Valentina Wilson-Kuykendall (respondent). The application was dated June 26, 2002, and signed under penalty of perjury. On her application respondent disclosed that she had been convicted of a criminal offense.
3. On October 26, 1998, in the Municipal Court of the State of California for the County of Alameda, respondent was convicted, upon a plea of no contest, of violation of Health and Safety Code section 11351 (possession of a controlled substance [cocaine base] for sale), a felony. Possession of a controlled substance for sale is a crime involving moral

turpitude which bears a substantial relationship to the qualifications, functions or duties of a real estate salesperson.

Respondent's case was certified to Superior Court for sentencing. On December 7, 1998, imposition of sentence was suspended and respondent was placed on three years probation on terms and conditions that included serving 11 days in county jail, payment of fines and fees totaling \$412.50, plus a monthly probation supervision fee, and a six-month license suspension. Respondent was also ordered not to use, possess or traffic narcotics or dangerous drugs, and not to associate with anyone using or trafficking in narcotics or dangerous drugs, to attend Narcotics Anonymous at least three times per week and test two times per week, and to register as a narcotics offender pursuant to Health and Safety Code section 11590. Respondent successfully completed probation and has not been involved in any known criminal activity since that time. Respondent has no other convictions.

Following completion of her probation respondent filed a Petition to Reduce Felony to a Misdemeanor pursuant to Penal Code section 17 and a Petition to Dismiss and Release from Penalties pursuant to Penal Code section 1203.4. On February 22, 2002, the Petition to reduce respondent's felony conviction to a misdemeanor was denied. However, the Petition to Dismiss and Release from Penalties pursuant to Penal Code section 1203.4 was granted.

5. According to respondent, the circumstances of her conviction are that in July 1998 she was living in her car because she did not have a job or a home. Respondent's son was temporarily staying with her mother, who was gravely ill. A childhood associate was aware of respondent's circumstances and offered her an opportunity to make some quick money. According to respondent, the associate paid her \$500.00 to drive to Los Angeles and purchase powder cocaine for him. Respondent bought \$450.00 worth of powder cocaine for the associate and \$90.00 worth of marijuana for her personal use. Upon her return respondent witnessed a "dope fiend rock up" the cocaine and paid the fiend \$20 on behalf of her childhood associate. Respondent then agreed to deliver the drugs for the associate. The associate gave respondent a pager and told the buyers they could page her. Respondent claims she was attempting to deliver the drugs for the associate when she was arrested. Respondent states this was the first time she had engaged in such illegal behavior. She denies she ever sold drugs on her own behalf and states she has not used marijuana since her conviction.¹

Respondent was arrested incident to a traffic stop on July 15, 1998. When respondent was stopped she gave the police officer a false name. Respondent states she did so because

¹ Respondent's statement at the time of arrest differs somewhat from her testimony at hearing. At the time of her arrest respondent stated she bought the cocaine to rock up and sell and the marijuana primarily to smoke it, but also to sell. She also stated she paid a dope fiend \$20 and some coke to rock up the cocaine, then had people page her to buy drugs. Respondent maintains the statement attributed to her is not accurate.

she knew that her driver's license had been suspended. During a pat down search the rock cocaine and marijuana were discovered in respondent's coat pockets.

6. During her testimony, respondent was candid and forthright regarding her prior illegal conduct. Her responses to questions on cross-examination and from the bench were direct and she maintained good eye contact. Her demeanor while testifying was appropriate and professional. Although respondent's explanation of her offense at hearing differed somewhat from statements attributed to her at the time of her arrest, during her testimony respondent acknowledged that she knew her participation in the drug transaction was illegal, that she regrets her actions and that she accepts responsibility for her actions. Respondent testified she is no longer in contact with her prior drug associates and that she has completely changed her lifestyle. She is now focused on achievement. Respondent's testimony was very honest and credible.

7. Respondent is 30 years old, and has an 8 year old son. In May 1999 respondent got married and her home life is now very stable. Respondent is very involved in her son's school activities. She is a room parent and volunteers in her son's class every Friday. She is also an active member of the PTA. In addition respondent attends church every Sunday at Great Life Baptist Church in Berkeley. On numerous occasions during the past 7 years she has served as a Sunday school teacher at the church on an as needed basis.

8. Respondent currently works for real estate broker Kenneth Session as an intern. She runs errands and is learning the practical applications of the real estate business. Respondent has held the intern position for close to a year. Prior to working for Session respondent worked for a year at XOMA, a pharmaceutical company in Berkeley, as a document control associate. Respondent has also worked as a customer services manager for ALPI International, a toy distributor, in Oakland, and she worked for three years as an executive assistant at Software Surgeons in Oakland. In 1996 she graduated from the Computer Learning Center. In 1995 she worked as a bank teller at Bank of America for approximately one year.

9. Respondent is very interested in real estate sales because she believes owning property is the first step towards financial freedom. She is very enthusiastic about the possibility of helping others purchase property and thereby improve their financial situation. In addition, respondent feels that obtaining a license will enable her to help provide support for her family. Respondent feels she will be very successful in real estate sales because she is very outgoing, she is people oriented and her husband is very supportive of her desire to pursue a real estate career.

10. At hearing real estate broker Kenneth Session testified on behalf of respondent. Session testified that during the time respondent has been interning with his organization he has found her to be enthusiastic, trustworthy, honest, competent and of the highest integrity. Session is aware of respondent's conviction but is convinced, based on his observations and personal interaction with respondent, that she is rehabilitated. He is therefore sponsoring

respondent to be a real estate agent and promises to monitor, mentor and help respondent to become an excellent agent. Respondent also submitted letters from David Kaim, her former manager at XOMA, and real estate broker Jeannette Muzima. In his letter Kaim states that through her job performance at XOMA, respondent demonstrated that she is qualified for any position where responsibility and accuracy are required. He also notes that respondent is dependable, conscientious, resourceful, competent, adaptable, principled, mature and able to work with a broad range of people. In her letter Muzima states she has found respondent to be sincere and intelligent with an infectious positive attitude and highly developed communication and listening skills.

LEGAL CONCLUSIONS

1. Cause for denial of respondent's application exists pursuant to Business and Professions Code sections 480, subdivision (a) and 10177, subdivision (b) in that respondent has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions or duties of a real estate sales person, as set forth in Finding 3.

2. Notwithstanding respondent's prior conviction, it is determined that it would not be against the public interest to grant respondent a real estate salesperson license upon appropriate terms and conditions. In this regard it is noted that respondent's conviction occurred over 4 years ago and respondent has not engaged in any known criminal conduct since that time. She has successfully completed a court ordered drug program, successfully completed her criminal probation, and her case was dismissed pursuant to Penal Code section 1203.4. In addition, since her conviction respondent has given up illegal drug use, maintained gainful employment and gotten married. She is now more involved in church and has a stable family life. Respondent also has the sponsorship of a responsible real estate broker who has promised to mentor her. Thus, the circumstances which resulted in respondent's illegal activity no longer exist. Respondent also seems motivated to contribute to her community and to improve her own life and the lives of those she loves. It thus appears unlikely that respondent will engage in criminal conduct in the future.

ORDER

Respondent'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 section 10156.5 of the Business and Professions Code. 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 said Code:

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 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 years have elapsed from the date of issuance of the restricted license to Respondent.
3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:
- (a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and
 - (b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.
4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two courses listed in Section 10153.2, other than real estate principals, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the

Commissioner has given written notice to Respondent of lifting the restriction.

5. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: 4/16/03


CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

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

FILED
JAN 25 2003

DEPARTMENT OF REAL ESTATE

Kathleen Contreras

In the Matter of the Application of

NATASHA VALENTINA
WILSON-KUYKENDALL,

} Case No. H-8274 SF

} OAH No.

Respondent

NOTICE OF HEARING ON APPLICATION

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
THE ELIHU HARRIS STATE BUILDING
1515 CLAY STREET, SUITE 206
OAKLAND, CALIFORNIA 94612**

on **MARCH 19, 2003**, at the hour of **1:30 PM**, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: JANUARY 24, 2003

DEPARTMENT OF REAL ESTATE
[Signature]
By **JAMES L. BEAVER, Counsel**
RE 500 (Rev. 8/97)

1 LARRY A. ALAMAO, Counsel
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FILED
JAN - 3 2003

DEPARTMENT OF REAL ESTATE.

By *Katherine Contreras*

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13 NATASHA VALENTINA) NO. H-8274 SF
14 WILSON-KUYKENDALL,) STATEMENT OF ISSUES
15 Respondent.)
16

17 The Complainant, LES R. BETTENCOURT, a Deputy Real
18 Estate Commissioner of the State of California, for Statement of
19 Issues against NATASHA VALENTINA WILSON-KUYKENDALL (hereinafter
20 "Respondent"), is informed and alleges as follows:

21 I

22 Respondent made application to the Department of Real
23 Estate of the State of California for a real estate salesperson
24 license on or about July 12, 2002, with the knowledge and
25 understanding that any license issued as a result of said
26 application would be subject to the conditions of Section 10153.4
27 of the Business and Professions Code.

1 II

2 Complainant, LES R. BETTENCOURT, a Deputy Real Estate
3 Commissioner of the State of California, makes this Statement of
4 Issues in his official capacity and not otherwise.

5 III

6 On or about December 7, 1998, in the Superior Court,
7 County of Alameda, Respondent was convicted of a violation of
8 Section 11351.5 of the California Health and Safety Code
9 (Possession for Sale of Controlled Substance), a crime involving
10 moral turpitude which bears a substantial relationship under
11 Section 2910, Title 10, California Code of Regulations, to the
12 qualifications, functions, or duties of a real estate licensee.

13 IV

14 The crime of which Respondent was convicted, as alleged
15 in Paragraph III, constitutes cause for denial of Respondent's
16 application for a real estate license under Sections 480(a) and
17 10177(b) of the California Business and Professions Code.

18 WHEREFORE, the Complainant prays that the above-
19 entitled matter be set for hearing and, upon proof of the charges
20 contained herein, that the Commissioner refuse to authorize the
21 issuance of, and deny the issuance of, a real estate salesperson
22 license to Respondent, and for such other and further relief as
23 may be proper under other provisions of law.

24 
25 LES R. BETTENCOURT
26 Deputy Real Estate Commissioner

27 Dated at Oakland, California,
this 19th day of November, 2002.