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FILED

JUL 23 2008

DEPARTMENT OF REAL ESTATE

By H. Max

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

In the Matter of the Application of) No. H-8509 SF
KIRSTEN LYNN AMODEO,)
Respondent.)

ORDER GRANTING UNRESTRICTED LICENSE

On December 19, 2003, a Decision was rendered herein denying the Respondent's application for real estate license, 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 10, 2004, and Respondent has operated as a restricted licensee since that time.

On March 10, 2008, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's

1 record as a restricted licensee. Respondent has demonstrated to
2 my satisfaction that Respondent meets the requirements of law for
3 the issuance of an unrestricted real estate salesperson license
4 and that it would not be against the public interest to issue
5 said license to Respondent.

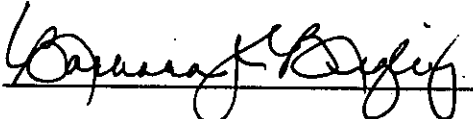
6 NOW, THEREFORE, IT IS ORDERED that Respondent's
7 petition for reinstatement is granted and that a real estate
8 salesperson license be issued to Respondent if, within nine (9)
9 months from the date of this order, Respondent shall:

10 Submit a completed application and pay the appropriate
11 fee for a real estate salesperson license.

12 This Order shall become effective immediately.

13 DATED: 7-18-08

14 JEFF DAVI
15 Real Estate Commissioner

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17 _____

18 BY: Barbara J. Bigby
19 Chief Deputy Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

KIRSTEN LYNN AMODEO,

Respondent.

Case No. H-8509

OAH No. N2003090382

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California on November 19, 2003.

Complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California, was represented by Deidre L. Johnson, Counsel.

Respondent Kirsten Lynn Amodeo represented herself.

The matter was submitted on November 19, 2003.

FACTUAL FINDINGS

1. On February 26, 2003, Kirsten Lynn Amodeo (respondent) submitted to the Department of Real Estate (Department) an application for a real estate salesperson license. Any license issued pursuant to that application would be subject to the provisions of Business and Professions Code section 10153.4. The Department denied respondent's application and she appealed.

2. In response to item number 25 on her application ("Have you ever been convicted of any violation of law? Convictions expunged under Penal Code section 1203.4 must be disclosed. However, you may omit minor traffic citations which do not constitute a misdemeanor or felony offense."), respondent checked "no." This answer was false and misleading. Respondent had been convicted of the crimes set forth in Finding 3, below.

3. On May 19, 1994, respondent was convicted in Santa Clara County, on her plea of nolo contendere, of misdemeanor violations of Vehicle Code section 23152(b) (driving with blood alcohol of .10 percent or more) and Penal Code section 148(a) (resisting, delaying, obstructing a peace officer). Imposition of sentence was suspended and respondent was placed on probation for three years on conditions that included 15 days in jail (served in a weekend work program), payment of fines of about \$1,200, and participation in a First

Offender Program. Respondent's jail sentence was later reduced to 12 days. Respondent successfully completed all her probationary terms.

4. The incident that resulted in respondent's convictions occurred on March 4, 1994. Respondent was 20 years old. She was attending college and working as a waitress in a restaurant. After work on the evening of March 3 or the early morning of March 4, respondent went out drinking with some friends. Shortly before 4:00 a.m. on March 4 she was found by a security guard in her car, parked near a hospital with the motor running and the lights on. Respondent appeared to be unconscious when the police arrived. When roused, she appeared to be under the influence of alcohol. A Preliminary Alcohol Screening test showed a blood alcohol level of .16. While she was being arrested at the scene, respondent tried to free herself from handcuffs, kicked an officer in the leg, and kicked the inside of the patrol vehicle. During the subsequent booking process, respondent kicked and spat at officers.

5. Respondent is 29 years old. She attended college part-time while working from about 1992 to 1998, majoring in journalism and public relations and accumulating enough units to be considered a junior. Respondent stopped both working and going to school when she was married in 1998. At the time, she was working two jobs, one as a waitress, the other which involved desktop publishing, accounting, and office administration. She has had two children since her marriage and has been a "stay-at-home mom" raising her two sons and a stepson.

6. Respondent's grandmother has been a real estate broker for 30 years. Respondent has worked for her for many years, primarily as a volunteer without pay. Now that her children are old enough that she can resume working, respondent wants to get a real estate license to get into the profession she had "grown up around."

7. Respondent can speak about the circumstances leading to her conviction only with great difficulty. Those circumstances, which were not fully revealed even at the hearing, were quite traumatic to her and to some extent explain why she drove under the influence of alcohol. Over the years, respondent has discussed the circumstances with her grandmother, who testified at the hearing about them. Without going into great detail, after drinking with friends, respondent drove while drunk in order to escape from a dangerous and uncomfortable situation in which her safety was compromised. Respondent was clearly very drunk when she was found by the security guard. The police report notes that respondent exhibited "large mood swings: from passive and cooperative, laughing and dancing, to loud yelling and violence. . . . She was very disoriented."

8. Respondent testified that her failure to report her convictions on her application was not intentional. She knew she had been convicted for driving under the influence (although she knew there was more than one count involved, she viewed it as "one incident," a DUI) but was "under the impression" that it had gone off her record after seven years. She has since learned this impression was based upon the effect of the conviction on her auto insurance record. Respondent also testified she was confused about whether the

DUI was a "traffic violation." She says she tried to call the Department's offices in Sacramento to get advice on whether she needed to report the conviction but was never able to get through. Ultimately, she "made the decision to say 'no'" on the application.

9. Respondent has not been in trouble with the law other than the 1994 incident. Her grandmother has never seen her drunk and describes the 1994 incident as "very out of character." Respondent has described her conduct in 1994 as "just plain disgusting" and has said it has taken her "many years to make peace with myself and forgive myself for the gross immaturity in attitude and decisions I made that evening."

LEGAL CONCLUSIONS

1. Business and Professions Code section 480(a) provides that 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 the profession for which application is made. Business and Professions Code section 10177(b) provides that a real estate license may be denied if the applicant has been convicted of a felony or a crime involving moral turpitude.

2. As required by Business and Professions Code section 481, the Department has developed criteria to be used in considering whether a crime is substantially related to the qualifications, functions and duties of a real estate license. Under title 10, California Code of Regulations section 2910(a)(8) an act or crime is deemed to be substantially related if it is done "with the intent or threat of doing substantial injury to the person or property of another."

3. No appellate case has yet held that misdemeanor driving under the influence of alcohol is a crime involving moral turpitude within the meaning of the Real Estate Law. And in the context of attorney discipline proceedings, the California Supreme Court has consistently held that a conviction of misdemeanor DUI does not involve moral turpitude per se.¹ While a crime does not involve moral turpitude per se, the circumstances under which it was committed may involve moral turpitude. Here, none of the circumstances of respondent's DUI conviction suggests moral turpitude. Resisting or obstructing an officer is, however, a crime involving moral turpitude in that it evidences a conscious disregard for established rules, orders and lawful authority.

4. Driving under the influence of alcohol creates the threat of injury to others or damage to property. Respondent's resisting or obstructing an officer involved kicking and spitting at officers. This obviously created the threat of injury. Thus, both crimes are substantially related to the qualifications, functions and duties of a real estate licensee under title 10, California Code of Regulations section 2910(a)(8).

¹ *In re Kelley* (1990) 52 Cal.3d 487, 494; *In re Carr* (1988) 46 Cal.App.4th 1089.

5. Therefore, cause for denial of respondent's application exists pursuant to Business and Professions Code section 480(a) based upon both respondent's driving under the influence and resisting/obstructing convictions, and pursuant to Business and Professions Code section 10177(b) based upon the resisting/obstructing conviction.

6. Respondent knew she had been convicted of, at the very least, driving under the influence. While she obviously realized she might have to report her conviction on her application for a real estate license, she ultimately chose not to do so. Cause for denial of respondent's application thereby exists pursuant to Business and Professions Code sections 480(c) and 10177(a) in that, by failing to reveal her convictions on her application respondent made a material misstatement of fact and knowingly failed to report a fact required to be revealed on the application.

7. Respondent's convictions occurred nine years ago, when she was 20 years old. Her decision to drive under the influence of alcohol appears to have been motivated by fear for her safety. Her acts of resisting/obstructing an officer, while they cannot be condoned, were clearly the product of her inebriation. Both acts were out of keeping with respondent's general character. Considering all that, it is determined that respondent's convictions no longer need serve as reasons to deny her a real estate salesperson license. But the same cannot be said for respondent's failure to reveal her convictions on her application. That very recent act, involving a conscious decision not to report a crime she knew she had committed, is troubling. Even so, respondent's decision was not made out of an intent to deceive, but out of naiveté. Despite that one act, it is determined that it would not be against the public interest to allow respondent to hold a restricted real estate license.

ORDER

The application of respondent Kirsten Lynn Amodeo 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 that 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 (2) 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 of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, 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 its issuance. The 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 of the suspension.
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: December 10, 2003


MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

FILED
SEP 16 2003

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

DEPARTMENT OF REAL ESTATE

Kathleen Conteras

In the Matter of the Application of

KIRSTEN LYNN AMODEO,

Respondent

Case No. H-8509 SF

OAH No.

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

**OFFICE OF ADMINISTRATIVE HEARING
THE ELIHU HARRIS STATE BUILDING
1515 CLAY STREET, SUITE 206
OAKLAND, CALIFORNIA 94612**

on **NOVEMBER 19, 2003**, at the hour of **9:00 AM**, 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.

DEPARTMENT OF REAL ESTATE

Dated: SEPTEMBER 10, 2003

By *Beidre L. Johnson*
BEIDRE L. JOHNSON, Counsel

RE 500 (Rev. 8/97)

1 DEIDRE L. JOHNSON, Counsel
2 SBN 66322
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-0789

FILED
AUG 29 2003

DEPARTMENT OF REAL ESTATE

By *Kirsten Amodeo*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 KIRSTEN LYNN AMODEO,) NO. H-8509 SF
13 Respondent.) STATEMENT OF ISSUES
14)

15 The Complainant, LES R. BETTENCOURT, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Statement of Issues against KIRSTEN LYNN AMODEO, alleges as
18 follows:

19 I

20 KIRSTEN LYNN AMODEO (hereafter Respondent), pursuant to
21 the provisions of Section 10153.3 of the Business and Professions
22 Code, made application to the Department of Real Estate of the
23 State of California for a real estate salesperson license on or
24 about February 26, 2003, with the knowledge and understanding
25 that any license issued as a result of said application would be
26 subject to the conditions of Section 10153.4 of the Business and
27 Professions Code.

1 II

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

5 III

6 In response to Question 25 of said application, to
7 wit: "Have you ever been convicted of any violation of law?",
8 Respondent answered "No." Respondent failed to disclose the
9 convictions alleged in Paragraph IV below.

10 IV

11 On or about May 19, 1994, in the Municipal Court of
12 California, County of Santa Clara, San Jose Facility, Respondent
13 was convicted of violation of Penal Code Section 148(a) (RESISTING,
14 DELAYING, OBSTRUCTING AN OFFICER) and Vehicle Code Section 23152(b)
15 (DRIVING WITH 0.08 OR HIGHER BLOOD ALCOHOL), crimes involving moral
16 turpitude, and/or crimes which bear a substantial relationship
17 under Section 2910, Title 10, California Code of Regulations, to
18 the qualifications, functions, or duties of a real estate licensee.

19 V


20 Respondent's failure in the application for licensure
21 to disclose the convictions alleged above constitutes the attempt
22 to procure a real estate license by fraud, misrepresentation or
23 deceit, or by a making material misstatement of fact in said
24 application, or by knowingly making a false statement in said
25 application, which is cause for denial of Respondent's
26 application for a real estate license under Sections 480(c)
27 and/or 10177(a) of the Business and Professions Code.

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VI

The crimes of which Respondent was convicted as alleged above constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and/or 10177(b) of the California Business and Professions Code.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, and for such other and further relief as may be proper in the premises.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California
this 26th day of August, 2003