

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
SHEILA CHRISTINE MASON,)
Respondent.)

FILED
OCT 29 2004

DEPARTMENT OF REAL ESTATE

By Laurie A. Z...

NO. H-8820 SF

OAH NO. N-2004070463

DECISION

The Proposed Decision dated October 18, 2004, 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 NOVEMBER 19, 2004.

IT IS SO ORDERED October 27, 2004.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

SHEILA CHRISTINE MASON,

Respondent.

Case No. H-8820 SF

OAH No. N2004070463

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California on September 16, 2004.

David B. Seals, Counsel, represented complainant, Deputy Real Estate Commissioner Les R. Bettencourt.

Respondent Sheila Christine Mason was present and represented herself.

The record was closed and the matter was submitted on September 16, 2004.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt made and filed the statement of issues in his capacity as a Deputy Real Estate Commissioner of the State of California, Department of Real Estate.

2. On February 27, 2004, respondent Sheila Christine Mason filed with the Department an application for a real estate salesperson license. Respondent did so with the understanding that any license that issued as a result of her application would be subject to the conditions of Business and Professions Code section 10153.4.

3. On August 21, 1997, respondent was convicted in the Superior Court of California, County of Monterey, on her plea of no contest to a felony violation of Penal Code section 182, subdivision (a)(1)/ Health and Safety Code section 11379.1, conspiracy to manufacture a controlled substance. The offense involves moral turpitude and is substantially related to the qualifications, functions or duties of a real estate licensee.

Respondent was sentenced to state prison for the middle term of five years on May 20, 1998. A concurrent three-year-term was imposed for the conviction set forth below in Finding 9.

4. The circumstances of the offense were that respondent and others were manufacturing crack cocaine for their own use.

5. On May 7, 1996, respondent was convicted in the Superior Court of California, County of Monterey on her plea of no contest to a misdemeanor violation of Penal Code section 459, commercial burglary. The offense involves moral turpitude and is substantially related to the qualifications, functions or duties of a real estate licensee.

Imposition of sentence was suspended and respondent was placed on conditional probation for three years. Respondent was ordered to serve ten days in county jail, and pay various fines and fees.

6. The facts and circumstances of the offense were that respondent and her boyfriend entered a Payless Drug Store. Respondent took two cartons of cigarettes and left the store without paying for them.

7. On October 3, 1996, respondent was convicted in the Superior Court of California, County of Monterey, on her plea of guilty to a misdemeanor violation of Penal Code section 415, subdivision (1), disturbing the peace by fighting, causing loud noise, or using offensive words in public. The offense does not involve moral turpitude per se.

Respondent was sentenced to 26 days in county jail.

8. The circumstances of the offense were that respondent struck back after being hit by her boyfriend, scratching him on the face. The offense does not involve moral turpitude by its facts.

9. On May 16, 1996, respondent was convicted in the Superior Court of California, County of Monterey on her plea of no contest to a felony violation of Health and Safety Code section 11350, possession of a controlled substance. The offense does not involve moral turpitude per se.

Imposition of sentence was suspended and respondent was placed on felony probation for three years. Respondent's probation was thereafter revoked but she was reinstated to probation on October 2, 1996. Respondent's probation was revoked again on May 20, 1998. Respondent was sentenced to state prison for the upper term of three years. The term was ordered to run concurrently with the term imposed for the conviction set forth in Finding 3, above.

10. The circumstances of the offense were that respondent, while high, was with a friend who was a drug dealer. When the police arrived the dealer gave the drugs to respondent. It was not established that the offense, as committed, involved moral turpitude.

11. Respondent was addicted to crack cocaine most of her adult life. She started using crack cocaine at the age of 19 and continued to use it for some 18 years. Respondent

was addicted at the time she committed the four offenses. Respondent last used crack cocaine on April 23, 1997.

12. Respondent believes that imprisonment was the best thing that ever happened to her. While she was imprisoned her youngest child died from complications caused by her use of drugs during her pregnancy with him. By then she had lost contact with her two other children. Respondent came to terms with herself and decided to change her behavior. Respondent attended meetings of Narcotics Anonymous, Alcoholic Anonymous, and/or CODA, twice a week for two years. Respondent attended church services. She refurbished bicycles for underprivileged children and disabled adults, from which she took great satisfaction. She took whatever courses she could, obtaining numerous certificates and awards.

13. Respondent was released on parole on June 16, 2000. Although her parole was for a three year period, she was granted an early discharge on July 16, 2001. According to Parole Agent Joaquin Borges it is rare for someone to be discharged so early during one's parole. Respondent was subjected to drug testing during parole. At no time did she test positive for drugs.

14. Following her parole and through December of 2002 respondent took correspondence classes on hotel and restaurant management through Education Direct. Respondent completed 16 units, earning a diploma on December 17, 2002.

15. Respondent has held a number of positions since her release from prison. Respondent worked for four months for a janitorial service. From August to October 2002, respondent was employed in sales by the Super 8 Motel in Marina. While working there, respondent helped uncover a consumer fraud scheme which eventually resulted in a large fine against the motel. She left that employment to work for Holiday Inn Express from October 2002 to April 2003. Respondent was quickly promoted from Guest Services Representative to Executive Assistant to the Director of Sales and General Manager. General Manager Darryl Durham, and Director of Sales Deborah Tesh each attest that respondent was a valued employee. Respondent worked for the Carmel Tradewinds Inn until November of 2003. Respondent suffered an industrial injury and has not worked since that time.

16. Respondent has been married to Charles Mason for seven years. He, too, was a drug user, and he also went to prison. Mason has been out of prison for four years and has steady employment as a butcher at the commissary at Fort Ord. Drugs are not a part of their family life. They live a quiet life together, watching videos and exercising in their free time. They no longer associate with the people with whom they associated when they were using drugs. They are very committed to each other, and to a drug free life together. Respondent has reconnected with her two children.

17. Respondent underwent real estate training from Century 21, Scenic Bay Properties in Marina. Real Estate Broker Richard Kelly knows of respondent's criminal history. He is willing to give her a salesperson position if she obtains a real estate license.

18. Respondent acknowledges her responsibility for her criminal offenses. She testified openly and honestly at the hearing. Her testimony was credible in all respects.

19. Respondent submitted numerous character letters. The letters uniformly speak to respondent's honesty, integrity, industry and sobriety following her release from prison.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 480, subdivision (a), the Commissioner may deny an application for a real estate license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the licensed profession. Under Business and Professions Code section 10177, subdivision (b), the Commissioner may deny an application for a real estate license if the applicant has been convicted of a felony or a crime involving moral turpitude (if the offense is substantially related to the qualifications, functions, or duties of a real estate licensee).

Respondent's convictions of conspiracy to manufacture a controlled substance in 1997 and commercial burglary in 1996 (Findings 3 and 5) are convictions of offenses that involve moral turpitude. Conspiracy to manufacture a controlled substance is substantially related to the qualifications, functions, or duties of a real estate licensee under section 2910, subdivision (a)(8), of title 10 of the California Code of Regulations in that it involves the doing of an unlawful act with the intent of conferring a financial or economic benefit of upon the perpetrator. The offense of commercial burglary is substantially related to the qualifications, functions or duties of a real estate licensee under section 2910, subdivision (a)(1), of title 10 of the California Code of Regulations in that it involves the fraudulent taking, obtaining, appropriating or retaining of the property of another. Each of respondent's convictions constitutes cause to deny her license application under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

Violations of Penal Code section 415 (fighting, causing loud noise or using offensive words in public) and Health and Safety Code section 11350 (possession of a controlled substance), (Findings 7-10), do not involve moral turpitude. However, these offenses are substantially related to the qualifications, functions or duties of a real estate licensee under section 2910, subdivision (a)(10), of title 10 of the California Code of Regulations as they constitute "[c]onduct which demonstrates a pattern of repeated and willful disregard of the law." Respondent's conviction of these offenses constitutes cause to deny her license application under Business and Professions Code section 480, subdivision (a). The conviction of these offenses does not constitute cause for denial under Business and Professions Code section 10177, subdivision (b).

2. All factual matters and all relevant criteria of rehabilitation set forth in section 2911 of title 10 of the California Code of Regulations have been considered. The commission of four separate offenses between May of 1996 and August of 1997 is a matter of some concern. However, respondent has met most of the relevant criteria for rehabilitation. More than seven years have elapsed since respondent's last conviction. Respondent has thus demonstrated that she can live within the rules of society, despite an earlier pattern of willfully disregarding the law. Respondent obtained an early discharge from parole. Respondent has abstained from the use of controlled substances for more than seven years. Respondent has a stable family. Her commitment to sobriety is evident from her lifestyle, the support system she has developed to prevent her from relapsing, and the career choices she is making. Respondent has completed education for her economic self-improvement. Respondent has demonstrated a significant change in attitude from that which existed at the time of the offenses. For these reasons, the public will be adequately protected by the following order which allows respondent to obtain a conditional license on a restricted basis.

ORDER

The application of Sheila Christine Mason for a real estate salesperson license is denied by reason of Legal Conclusion 1; 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 10156.5 of said Code:

1. 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. 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 of the suspension.
2. 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.

3. 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 the restricted license in the event of:
 - (a) The conviction of respondent (including by 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.
4. 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.
5. 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.

DATED: October 18, 2004



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

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

FILED
JUL 15 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

SHEILA CHRISTINE MASON,

By Laurie G. Zi

Case No. H-8820 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, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **THURSDAY, SEPTEMBER 16, 2004**, at the hour of **1:30 P.M.**, 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 are 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: JULY 15, 2004

DEPARTMENT OF REAL ESTATE

By David B. Seals
DAVID B. SEALS, Counsel (172)

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED

JUL - 7 2004

DEPARTMENT OF REAL ESTATE

By Laurie J. [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No. H-8820 SF
12 SHEILA CHRISTINE MASON,)
13 Respondent.) STATEMENT OF ISSUES

14
15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against SHEILA CHRISTINE MASON (hereinafter "Respondent")
18 alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about February 27, 2004 with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section
25 10153.4 of the California Business and Professions Code.

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II

Complainant, Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

III

On or about August 21, 1997, in the Superior Court of California, County of Monterey, Respondent was convicted of violation of California Penal Code Section 182(a)(1) with Health and Safety Code Section 11379.6 (Conspiracy to Manufacture Controlled Substance), a felony and crime involving moral turpitude and/or which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

IV

On or about May 7, 1996, in the Municipal Court of California, County of Monterey, Monterey Judicial District, Respondent was convicted of violation of California Penal Code Section 459 (Commercial Burglary), a crime involving moral turpitude and/or which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

///
///
///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

V

On or about October 3, 1996, in the Municipal Court of California, County of Monterey, Monterey Judicial District, Respondent was convicted of violation of California Penal Code Section 415(1) (Disturbing the Peace by Fighting), a crime involving moral turpitude and/or which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

VI

On or about May 16, 1996, in the Superior Court of California, County of Monterey, Respondent was convicted of violation of California Health and Safety Code Section 11350 (Possession of Controlled Substance), a felony and crime involving moral turpitude and/or which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

VII

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

///
///
///
///
///

1 WHEREFORE, the Complainant prays that the above-entitled
2 matter be set for hearing and, upon proof of the charges
3 contained herein, that the Commissioner refuse to authorize the
4 issuance of, and deny the issuance of, a real estate salesperson
5 license to Respondent, and for such other and further relief as
6 may be proper under other provisions of law.

7
8 

9 LES R. BETTENCOURT
 Deputy Real Estate Commissioner

10 Dated at Sacramento, California,
11 this 29th day of June, 2004.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27