

FILED
JUL 18 2007

DEPARTMENT OF REAL ESTATE

By Juan Aranda

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of) No. H-8827 SF
TERESA JUSTINA ROLIZ SILMON,)
Respondent.)

ORDER GRANTING UNRESTRICTED LICENSE

On January 25, 2005, a Decision was rendered herein denying Respondent's application for a real estate salesperson 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 28, 2005, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On March 1, 2007, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

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1 I have considered Respondent's Petition and the
2 evidence submitted in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate
6 salesperson license and that it would not be against the public
7 interest to issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 Petition for removal of restrictions is granted and that a real
10 estate salesperson license be issued to Respondent subject to the
11 following understanding and conditions:

12 1. The license issued pursuant to this order shall be
13 deemed to be the first renewal of Respondent's real estate
14 salesperson license for the purpose of applying the provisions of
15 Section 10153.4.

16 2. Within nine (9) months from the date of this order
17 Respondent shall:

18 (a) Submit a completed application and pay the
19 appropriate fee for a real estate salesperson license, and

20 (b) Submit evidence of having taken and successfully
21 completed the courses specified in paragraphs (1) to (4)
22 inclusive of subdivision (a) of Section 10170.5 of the Real
23 Estate Law for renewal of a real estate license.

24 3. Upon renewal of the license issued pursuant to this
25 order, Respondent shall submit evidence of having taken and
26 successfully completed the continuing education requirements of

27 ///

1 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
2 real estate license.

3 This Order shall become effective immediately.

4 IT IS SO ORDERED 7-9, 2007.

5 JEFF DAVI
6 Real Estate Commissioner

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JAN 31 2005

DEPARTMENT OF REAL ESTATE

By K. Contreras

* * *

NO. H-8827 SF

N-2004090162

The Proposed Decision dated December 31, 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 February 22, 2005.

IT IS SO ORDERED 1-25, 2005.

JEFF DAVIS
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

TERESA JUSTINA ROLIZ SILMON,

Respondent.

No. H-8827 SF

OAH No. N2004090162

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on November 12, 2004, in Oakland, California.

Department of Real Estate Counsel Deidre L. Johnson represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

Respondent Teresa Justina Roliz Silmon appeared and represented herself.

The record was held open for respondent to submit a letter of reference. On December 1, 2004, the declaration of Thomas Issa Saberi and a cover letter from respondent were received. These documents were marked collectively as Exhibit C and admitted in evidence as administrative hearsay. The record was closed and the matter was deemed submitted on December 1, 2004.

FACTUAL FINDINGS

1. Respondent Teresa Justina Roliz Silmon submitted to the Department of Real Estate (Department) an application for a real estate salesperson license. The application was dated July 17, 2003, and the Department received it on September 25, 2003.

2. On April 20, 1995, in the Municipal Court, San Leandro-Hayward Judicial District, County of Alameda, State of California, respondent was convicted on her plea of guilty of a violation of Vehicle Code section 12500 (driving without a valid driver's license). A charge of violating Penal Code section 148.9 (false identification to police officer) was dismissed as part of the plea bargain. Respondent was granted a three-year conditional sentence and required to pay a \$325 fine. The court also ordered her not to drive without a driver's license and insurance.

3. On April 27, 1995, in the Municipal Court of California, Santa Clara County Judicial District, respondent was convicted on her plea of nolo contendere of a violation of Penal Code section 529.3 (false personation to make another liable). Imposition of sentence was suspended and respondent was placed on court probation for two years. Conditions of probation included serving 14 days in the Weekend Work program. On May 15, 1995, respondent's probation was modified to allow her to perform 200 hours of volunteer work in lieu of serving the 13-day balance of her term in the Weekend Work program. On October 4, 1995, respondent completed her 200 hours of volunteer work.

4. The facts and circumstances of both convictions are essentially the same. On October 29, 1992, in Alameda County, and on June 18, 1993, in Los Altos, respondent was stopped for a traffic violation. At the time of the stops, her driver's license had been suspended for failing to appear on a traffic citation, and she had not taken care of the suspension because she did not have the money to pay the fine. Afraid that she would be taken to jail for driving with a suspended license, respondent falsely identified herself to the law enforcement officer, giving her older sister's name and date of birth as her own. In October 1993, respondent's sister, Maria Roliz Choi, reported respondent's offenses to police after learning that her driver's license had been suspended for failing to appear on citations she knew nothing about. (After obtaining information about the citations, Choi suspected that her younger sister had gotten the citations and falsely identified herself as Choi. Respondent admitted doing so when Choi confronted her.)

5. Respondent was 20 years old at the time of the first offense and 21 at the time of the second. In the Conviction Detail Report (RE 515D) she completed in February 2004, respondent explained her situation when she committed the offenses: "...I was young, naïve, and going through many life changes. I had two children and an unhealthy dead end relationship." Facing the consequences of what she had done was very painful for respondent, but it motivated her to turn her life in a more positive direction. Not surprisingly, her relationship with her sister and the rest of their family suffered because of her offenses, and it took respondent a long time to regain their trust.

6. Respondent has worked for Thomas Issa Saberi, an attorney and real estate broker, on and off since January 1993. She started as a receptionist and worked her way up to being a paralegal. (Respondent has also worked in other law offices as a paralegal.) Saberi represented respondent in her criminal cases, and he recounted the following in his November 23, 2004 declaration: "During those court proceedings, Ms. Roliz Silmon showed great remorse for her role in those actions, and adamantly without hesitation dealt with the ramifications of both the Court and the strained relationship with her sister and family."

7. One consequence of respondent's criminal convictions was the revocation of the notary public commission she had obtained in October 1994. After waiting years before applying for reinstatement, respondent regained her commission in August 2002.

8. Respondent's driver's license is in good standing. In 1995, she took the necessary steps to get the license reinstated.

9. The sister whom respondent victimized in 1992 and 1993 came to the hearing to testify on respondent's behalf. Maria Roliz Choi believes that respondent learned her lesson and worked hard to become a better person after her convictions. Choi has seen many positive changes in her sister – respondent works hard at her job, she is involved in her community, and she is a person of integrity.

10. When respondent applied for a real estate license, she fully disclosed her criminal history on the application.

11. Thomas Saberi is willing to have respondent work for him as a real estate salesperson, even if her license is restricted. He stated in his declaration:

Throughout the years that I have known her, Ms. Roliz Silmon has never given me any reason not to trust her integrity. I have always given her the utmost responsibility in the handling of both my personal and professional confidential affairs. Ms. Roliz Silmon has never abused this trust or responsibility given to her. It is my belief and contention that Ms. Roliz Silmon has since rehabilitated remarkably and would not ever again commit any such crimes.

12. Respondent is now 34 years old. She has six children, ages 15 years to 18 months, and she is expecting her seventh child in February 2005. Respondent's step son and her god son also live with her and her husband. Respondent serves on a school site council for the San Francisco Unified School District, and she is active in the Lusitano Club of California, a social and educational organization serving the Portuguese Maccanese community. Maria Roliz Choi is the president of the Lusitano Club, and respondent has served on the club's board of directors for four years.

13. Respondent has not completed all the courses required under Business and Professions Code section 10153.4.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), authorizes the denial of a license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the denial of a license if the applicant has been convicted of a felony or a crime involving moral turpitude. Although the latter statute does not contain the "substantially related" language, the law is clear that a conviction is not actionable under this section unless it is for a crime that is substantially related to the qualifications, functions or duties of a real estate licensee.¹

¹ *Brandt v. Fox* (1979) 90 Cal.App.3d 737.

California Code of Regulations, title 10, section 2910, sets forth the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves "[t]he employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end" (subd. (a)(4)); "[w]illfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct" (subd. (a)(7)); and "[c]onduct which demonstrates a pattern of repeated and willful disregard of the law" (subd. (a)(10)).

2. Findings 2 and 4: A violation of Vehicle Code section 12500 (driving without a valid driver's license) does not involve moral turpitude as a matter of law, but respondent's 1992 offense does involve moral turpitude by its facts and circumstances (false identification to a law enforcement officer). The crime is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(4), and subdivision (a)(7). Respondent's 1995 conviction constitutes cause to deny her license application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

3. Findings 3 and 4: Respondent's 1995 conviction for a violation of Penal Code section 529.3 (false personation to make another liable) was for a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(4), and subdivision (a)(10). The conviction constitutes cause to deny respondent's license application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

4. Almost ten years have elapsed since respondent's convictions, and since then she has stayed out of trouble and become a productive and involved member of her community. She has a good record of employment as a paralegal, and her longtime employer vouches for her honesty and trustworthiness. On her license application and in her testimony at the hearing, respondent was forthright about her criminal history. In view of the strong evidence of rehabilitation, it would not be contrary to the public interest to grant respondent a restricted real estate license.

ORDER

The application of respondent Teresa Justina Roliz Silmon for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to her 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 that 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. Respondent's conviction, 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. 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 the 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 real estate 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 18 months of the issuance of the restricted license, submit evidence satisfactory to the Real Estate 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 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.

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 31, 2004


NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

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

By Kathleen Contreras

In the Matter of the Application of

TERESA JUSTINA ROLIZ SILMON,

Respondent

}

Case No. H-8827 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 12, 2004**, 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 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.

DEPARTMENT OF REAL ESTATE

Dated: SEPTEMBER 8, 2004

By BEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel
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3 Department of Real Estate
4 P. O. Box 187007
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DEPARTMENT OF REAL ESTATE

By Althea Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of)
12 TERESA JUSTINA ROLIZ SILMON,) NO. H-8827 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 TERESA JUSTINA ROLIZ SILMON, alleges
18 as follows:

19 I

20 TERESA JUSTINA ROLIZ SILMON (hereafter Respondent),
21 pursuant to the provisions of Section 10153.3 of the Business and
22 Professions Code made application to the Department of Real
23 Estate of the State of California for a real estate salesperson
24 license on or about September 25, 2003, 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 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 On or about April 20, 1995, in the Municipal Court of
7 the State of California, County of Alameda, San Leandro-Hayward
8 Judicial District, in Case No. 297165, Respondent was convicted
9 of violation of Vehicle Code Section 12500 (DRIVING WITHOUT A
10 VALID DRIVER'S LICENSE), pursuant to a plea agreement following
11 a charge of Penal Code Section 148.9 (FALSE IDENTITY TO A POLICE
12 OFFICER), a misdemeanor, a crime involving moral turpitude,
13 and/or a crime which bears a substantial relationship under
14 Section 2910, Title 10, California Code of Regulations, to the
15 qualifications, functions, or duties of a real estate licensee.

16 IV

17 On or about April 27, 1995, in the Municipal Court of
18 the State of California, County of Santa Clara, Palo Alto
19 Facility, in Case No. B93-14499, Respondent was convicted of
20 violation of Penal Code Section 529.3 (PERSONATE TO MAKE OTHER
21 LIABLE), a misdemeanor, a crime involving moral turpitude,
22 and/or a crime which bears a substantial relationship under
23 Section 2910, Title 10, California Code of Regulations, to the
24 qualifications, functions, or duties of a real estate licensee.

25 V

26 The crimes of which Respondent was convicted as alleged
27 in Paragraphs III and IV above, jointly and severally, constitute

1 cause for denial of Respondent's application for a real estate
2 license under Sections 480(a) and/or 10177(b) of the California
3 Business and Professions Code.

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

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13 LES R. BETTENCOURT
14 Deputy Real Estate Commissioner

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16 Dated at Oakland, California
17 this 17th day of July, 2004.