

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

SAN A. UNG,

Respondent.

Case No. H- 9091 SF

OAH No. N2005020586

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on May 5, 2005.

Real Estate Counsel James A. Beaver represented complainant Charles W. Koenig, a deputy real estate commissioner.

Respondent San A. Ung was present and represented herself.

The record was left open for respondent to submit a copy of an order pursuant to Penal Code section 1203.4. The document was received on May 11, 2005, marked as Exhibit C, and received in evidence. The record was closed and the matter was submitted for decision on May 11, 2005.

FACTUAL FINDINGS

1. Complainant Charles W. Koenig filed the statement of issues in his capacity as a deputy real estate commissioner of the State of California.
2. Respondent San A. Ung filed with the department an application for a real estate salesperson license on July 12, 2004. Any license that issues from the application is subject to the provisions of Business and Professions Code section 10153.4.
3. Question 25 of the application asks: "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 conviction." Respondent checked the box for "No." In so doing, respondent made a material misstatement of fact in that she did not disclose the conviction set forth below in Factual Finding 4.

4. On March 12, 1999, respondent was convicted in Alameda County on her plea of nolo contendere to a single count of violating Penal Code section 470, subdivision (a), forgery, a misdemeanor. Forgery is an offense that involves moral turpitude, and it is substantially related to the qualifications, functions or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(2).)

Imposition of sentence was suspended and respondent was placed on a conditional sentence for two years. Terms and conditions of probation included serving five days in county jail and paying a \$100 restitution fund fine.

5. The facts and circumstances of the offense were that on September 7, 1997, respondent attempted to cash a check she forged in the amount of \$431.

Respondent was 18 years old at the time of the offense. She followed a group of friends into the bathroom of a nightclub and joined in as they rifled through an unattended purse. Respondent removed one check and a student identification card from the purse. Respondent used the identification when she attempted to cash the check.

6. Respondent says she did not know any better at the time, yet she admits that her parents taught her not to steal or commit forgery. Respondent says she now understands that her conduct was wrong.

7. The court delayed prosecution of respondent's case for two years. She was ordered to attend classes and obtain a GED. Respondent enrolled in Laney College but dropped out one month later in order to work and earn money. Respondent was arrested about two years later on a bench warrant. Respondent says she did not understand that she was required to remain in school.

8. The conviction has been set aside pursuant to Penal Code section 1203.4.

9. With respect to completing the application, respondent did not provide an understandable explanation of her failure to disclose the prior conviction. Respondent's testimony on this point was both confusing and contradictory. What is clear is that respondent did not carefully read the instructions regarding answering Question 25 and she did not understand the import of the question before she answered it. Respondent did not seek advice as to the meaning of the question before she answered it. Respondent did not research the status of her conviction before answering the question. And respondent did not carefully read the salesperson certification before signing the application under penalty of perjury.

10. Respondent is 25 years old. She is single and lives with two sisters. Respondent supports herself and provides monthly payments to help support her parents.

11. Respondent was just hired as a vehicle salesperson by Dublin Toyota. She is working under a temporary permit issued by the Department of Motor Vehicles. Her

application for a vehicle salesperson license is pending. Respondent disclosed her conviction on her application for licensure with DMV.

12. From September of 2001 to April of 2004 respondent worked as an account executive for the Valley Yellow Pages. Respondent did not submit a character or job performance reference from this employer.

13. Within the last year respondent and a partner started a business called Creative Staging. On a part-time basis, respondent stages homes that are for sale. Respondent really enjoys the work and it has encouraged her obtain a real estate license. Respondent worked for two months as a telemarketer for United Mortgage Group. Respondent does not like this type of work. Her preference is to do real estate sales. Respondent does not have a sponsoring broker.

14. Respondent submitted one letter of recommendation, from Casey Tinloy, who has known respondent for seven years. He attests that respondent "has strived to become an honest and hard working person." It is not known whether Tinloy knows of respondent's conviction.

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 an offense that is substantially related to the qualifications, functions or duties of a real estate licensee. 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 of a crime involving moral turpitude. By reason of the matters set forth in Factual Findings 3 and 4, cause exists to deny respondent's application under Business and Professions Code section 480, subdivision (a) and section 10177, subdivision (b).

2. Under Business and Professions Code section 480, subdivision (c) the Commissioner may deny a real estate license if the applicant has knowingly made a false statement of fact required to be revealed in the application. Under Business and Professions Code section 10177, subdivision (a), the commissioner may deny a real estate license if the applicant has attempted to procure a license by fraud, misrepresentation or deceit, or by making a material misstatement of fact in the application. By reason of the matters set forth in Factual Findings 3 and 9, it is determined that respondent knowingly made a false statement of fact and a material misrepresentation on her application for licensure. This constitutes cause to deny her license under Business and Professions Code section 480, subdivision (c), and section 10177, subdivision (a).

3. In California Code of Regulations, title 10, section 2911, the Department has established criteria to be used in evaluating the rehabilitation of an applicant with a criminal record. The burden is on respondent to show that she is sufficiently rehabilitated so that it

would be appropriate to issue her a real estate license. Standing alone, the conviction is not of great concern. The acts occurred more than seven years ago, and the conviction occurred more than five years ago. Respondent completed probation and the conviction has been expunged. She has a steady employment record and she commendably provides financial support to her parents. Of much greater concern is respondent's failure to disclose the conviction on the application for licensure. The manner in which respondent completed the application evidences, at best, that she does not appreciate the importance of providing accurate information on official documents she executes under penalty of perjury. The Department must be able to rely on its licensees to carry out complex fiduciary duties in a diligent manner. The manner in which respondent completed the application demonstrates that respondent is not capable of meeting this standard at this time. For these reasons, the protection of the public compels the denial of respondent's application for licensure. Respondent is encouraged to continue in her rehabilitation efforts and to reapply within the time prescribed by law.

ORDER

The application of San A. Ung for a real estate salesperson license is denied.

DATED: May 18, 2005



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

1 JAMES L. BEAVER, Counsel (SBN 60543)
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FILED
APR 28 2005

DEPARTMENT OF REAL ESTATE

[Handwritten Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Application of)	
12	SAN A. UNG,)	No. H-9091 SF
13	Respondent.)	<u>FIRST AMENDED</u>
14)	<u>STATEMENT OF ISSUES</u>

15 The Complainant, Charles W. Koenig, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against SAN A. UNG (hereinafter "Respondent"), alleges as
18 follows:

19 I

20 Complainant, Charles W. Koenig, a Deputy Real Estate
21 Commissioner of the State of California, makes this Statement of
22 Issues in his official capacity.

23 II

24 Respondent made application to the Department of Real
25 Estate of the State of California for a real estate salesperson
26 license on or about July 12, 2004 with the knowledge and
27 understanding that any license issued as a result of said

1 application would be subject to the conditions of Section
2 10153.4 of the California Business and Professions Code
3 (hereinafter "the Code").

4 III

5 In response to Question 25 of said application, to
6 wit: "Have you ever been convicted of any violation of law?
7 Convictions expunged under Penal Code Section 1203.4 must be
8 disclosed. However, you may omit minor traffic citations which
9 do not constitute a misdemeanor or felony offense." Respondent
10 answered "No", and thereby concealed and failed to disclose the
11 conviction described in Paragraphs IV, below.

12 IV

13 On or about March 12, 1999, in the Municipal Court of
14 the State of California, County of Alameda, Respondent was
15 convicted of the crime of Forgery in violation of Penal Code
16 Section 470(a), a misdemeanor and a crime involving moral
17 turpitude which bears a substantial relationship under Section
18 2910, Title 10, California Code of Regulations (herein "the
19 Regulations"), to the qualifications, functions or duties of a
20 real estate licensee.

21 V

22 In failing to reveal the conviction described in
23 Paragraph IV, above, in said application, Respondent attempted
24 to procure a real estate license by fraud, misrepresentation, or
25 deceit, or by making a material misstatement of fact in said
26 application, which constitutes cause for denial of Respondent's

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1 application for a real estate license under Sections 480(c) and
2 10177(a) of the California Business and Professions Code.

3 VI

4 Respondent's criminal conviction described in
5 Paragraph IV, above, constitutes cause for denial of
6 Respondent's application for a real estate license under
7 Sections 480(a) and 10177(b) of the California Business and
8 Professions Code.

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

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16 
17 CHARLES W. KOENIG
18 Deputy Real Estate Commissioner

19 Dated at Sacramento, California,
20 this 26th day of April, 2005.

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FILED
JAN 24 2005

DEPARTMENT OF REAL ESTATE
By [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 SAN A. UNG,) No. H-9091 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 Statement of
17 Issues against SAN A. UNG (hereinafter "Respondent"), alleges as
18 follows:

19 I

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

23 II

24 Respondent made application to the Department of Real
25 Estate of the State of California for a real estate salesperson
26 license on or about July 12, 2004 with the knowledge and
27 understanding that any license issued as a result of said

1 application would be subject to the conditions of Section
2 10153.4 of the California Business and Professions Code
3 (hereinafter "the Code").

4 III

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6 the State of California, County of Alameda, Respondent was
7 convicted of the crime of Forgery in violation of Penal Code
8 Section 470(a), a misdemeanor and a crime involving moral
9 turpitude which bears a substantial relationship under Section
10 2910, Title 10, California Code of Regulations (herein "the
11 Regulations"), to the qualifications, functions or duties of a
12 real estate licensee.

13 IV

14 Respondent's criminal conviction described in
15 Paragraph III, above, constitutes cause for denial of
16 Respondent's application for a real estate license under
17 Sections 480(a) and 10177(b) of the California Business and
18 Professions Code.

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WHEREFORE, 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 14th day of January, 2005.