

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JEANNE VILLEGAS,

Respondent.

Case No. H-9458 SF

OAH No. N2006010442

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on February 14, 2006.

Daniel E. Kehew, Counsel, represented complainant E. J. Haberer II, Deputy Real Estate Commissioner of the State of California.

Scott G. Lyon, Attorney at Law, Law Offices of Julie L. Sak, P.C., 2275 E. Bayshore Road, Ste. 140, Palo Alto, California 94303, represented respondent Jeanne Villegas, who was also present.

The matter was submitted on February 14, 2006.

FACTUAL FINDINGS

1. On February 25, 2005, respondent Jeanne Villegas filed with the Department of Real Estate an application for a real estate salesperson license.

2. Question 25 on the license 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 OFFENSE. [Emphasis in original.]

In response to question 25, respondent checked the box marked "NO."

3. On May 19, 1987, respondent was convicted of a violation of Penal Code section 484f, subdivision (2) (access card forgery), a felony. Respondent was ordered to perform 75 hours of community service, pay fines and fees in the approximate amount of \$200, and complete one year of formal probation. On December 11, 1997, respondent's felony conviction was reduced to a misdemeanor and dismissed pursuant to Penal Code sections 17, subdivision (b)(3), and 1203.4.

The facts and circumstances giving rise to this conviction are that, on February 24, 1987, respondent used a stolen credit card to make four different purchases at Macy's in the Valley Fair shopping center. Respondent's boyfriend at the time – respondent was 19 years old – worked at an auto painting shop; he had stolen the card from a customer's car.

4. On May 6, 1991, respondent was convicted of a violation of Vehicle Code section 14601.1, subdivision (a) (driving while privilege revoked or suspended), a misdemeanor. No court records were submitted concerning this conviction. Respondent acknowledges that she suffered the conviction, but she does not remember the exact terms and conditions of her sentence. She remembers that a fine was imposed, which she paid.

5. On May 15, 1992, respondent was convicted of a violation of Vehicle Code section 20002, subdivision (a) (hit and run – property damage), a misdemeanor, and a violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level 0.08 percent or higher), a misdemeanor. Imposition of sentence was suspended on the conditions that respondent serve 12 days in jail, which was satisfied by community service in lieu of jail time, pay fines and fees in the approximate amount of \$1,700, and complete three years of probation. Respondent was also required to attend 10 to 12 Alcoholics Anonymous classes, and to complete the first offender drinking driver program.

The facts and circumstances leading to these convictions are that, on March 15, 1992, respondent was with Arturo Villegas, who is now her husband, and another friend. Respondent offered to drive, even though she had been drinking. She was searching for a shortcut home and proceeding through a green light when her vehicle was struck on the passenger side by another vehicle. Respondent continued driving, turned a corner and came to a stop behind a fire station, where she thought it was safe, about 500 feet from the point of impact. (Respondent's husband believes that the distance was closer to 200 feet.) Respondent testified that she remained in view of the vehicle that struck her at all times.

6. On July 7, 1994, respondent was convicted of a violation of Vehicle Code section 14601.1, subdivision (a) (driving while privilege suspended or revoked), a misdemeanor.¹ No court records were submitted concerning this conviction. Respondent

¹ In her Interview Information Statement (Factual Finding 9), respondent also reported that, in the same case, she was convicted of violating Vehicle Code sections 21453, subdivision (a) (failure to stop at a red light) and 12951(a) (driving without driver's license in immediate possession). These violations, however, were infractions, not misdemeanors, and they are not required to be disclosed on the real estate salesperson application.

acknowledges that she suffered the conviction, but she does not remember the exact terms and conditions of her sentence. She remembers that a fine was imposed, which she paid.

7. Paragraph VII of the statement of issues alleges that respondent was convicted of a violation of Penal Code section 242 (battery) on March 23, 1993. The only evidence to support this allegation consisted of an "Arrest Disposition Report" from the records of the California Department of Justice, and a "Criminal History Review" from the Santa Clara County Sheriff's Office, both of which were offered and admitted into evidence as administrative hearsay only.

Respondent acknowledged the convictions set forth in Factual Findings 4, 5 and 6, which are also established only by the Arrest Disposition Report and the Criminal History Review. Respondent does not remember ever being convicted of battery. She was surprised to see it on her record.

The evidence fails to establish that respondent was convicted of battery in 1993, as alleged in the statement of issues.

8. Respondent has not had any arrests or convictions since 1994.

9. On April 14, 2005, respondent submitted to the department a "Confidential - Interview Information Statement." In that statement, respondent fully disclosed all of the convictions set forth in Factual Findings 3, 4, 5 and 6. Respondent completed a "conviction detail report" for each conviction. In her report on the access card forgery, respondent stated that her boyfriend had stolen the credit card and that "he really wanted that VCR and he needed me to sign." (At hearing, respondent acknowledged that she made three other purchases with the card on the same day.) Respondent stated that she was young and "in love with the wrong kind of guy." Respondent included a page devoted to the alleged battery conviction, but entered questions marks on the form, and stated her understanding that the alleged conviction was not part of her record.

10. Respondent is 38 years old. She married Arturo Villegas in 1992. They have two children, ages five and three. They own their own house in San Jose.

Respondent graduated from high school in 1985. She received a medical assistant certificate in 1986 from the National Education Center. In 1997, respondent earned her A.A. degree from San Jose City College. In 1998 and 1999, respondent was enrolled in the nursing program at Evergreen Valley Community College. She left that program when she was accepted into Stanford's physician assistant program. In 2001, respondent received a certificate of clinical proficiency as a physician assistant from the Stanford University Medical School.

After she received her medical assistant certificate, respondent worked in several medical offices and clinics. Much of her work has been part-time; respondent has often held two jobs at the same time, or attended school while she was working. Since 1994,

respondent has been employed as a national certified medical assistant and certified translator at Santa Clara Valley Medical Center. From 1989 to April 1999, she also worked as a medical assistant for the San Jose Medical Group.

Respondent has participated in several continuing education programs related to her work as a medical assistant and a physician assistant. In 1997, she completed a 124-hour medical assistant certification program for Santa Clara Valley Health and Hospital System; in 1999, she completed a 30-hour course at Stanford on physical diagnosis; she has maintained her national certification as a medical assistant; and she is current on her American Heart Association certifications for basic life support and advanced cardiovascular life support. Respondent is also a certified phlebotomist.

In September 2004, respondent enrolled in real estate classes offered by Executive Programs. Respondent has decided to change careers because she needs more flexibility to take care of her children. She is a "very, very busy mom." Respondent is a room-parent at school, and she takes her children to numerous activities, including ice skating, basketball, ballet and tap dancing.

11. When respondent applied to physician assistant school in the mid-1990's, she submitted numerous character references from doctors, nurses, and other health care professionals familiar with her work. Fourteen of those letters were submitted at hearing. All of the letters praise respondent's work ethic, attitude, dependability, and conscientiousness. Santhi Lingamneni, M.D., Director of the Valley Medical Center Urgent Care Clinic, states that respondent's work in the clinic was "exemplary," and that she was "precise, thorough, and efficient." Cynthia Cummings, M.D., Lead Physician of the San Jose Medical Group, found respondent to be "extremely efficient." Both Dr. Lingamneni and Dr. Cummings gave respondent their highest recommendation, and both found respondent to be "outstanding" in the areas of honesty and personal integrity.

12. Respondent does not drink and drive. If she has a glass of wine, it is at home after her children have gone to bed. She and her husband do not go to nightclubs anymore.

13. Respondent volunteers her time each year to give flu shots and Hepatitis B vaccinations. She is a member of her homeowner's association, and she has created an emergency preparedness program for her family and her neighbors. Although respondent is now paid for her bilingual ability, she volunteered as an interpreter at work long before she was paid to do so. Respondent has also worked as a medical volunteer at a San Jose triathlon.

14. Respondent testified that she did not disclose her felony conviction on her license application because, in 1997, her attorney told her that it had been "cleared." It was her impression that the conviction was "cleared forever." She has never disclosed it on any application she has completed since 1997. Respondent saw the reference to "expunged" convictions on the real estate license application, but she did not know what "expunged" meant until she did not get her license; then, she called the lawyer who had represented her in

her criminal case, and went to the law library to look the word up. Respondent testified that she did not disclose her remaining convictions because she thought they were traffic citations. Respondent acknowledges that she did not check to see if her convictions were in fact citations only, and she did not seek any assistance to make sure that she completed the application correctly. She was "very excited" that she had passed the real estate examination on her first try, and she wanted to submit her application as soon as possible.

Respondent also acknowledged that she is embarrassed by her criminal history and is "in denial" about her past. She testified that "looking back has been tough . . . I wish it never happened . . . I wish I'd said 'no' when I wanted to say 'no' . . . It is hard to talk about now and hard to own up to."

At hearing, respondent apologized for her past and for not disclosing her convictions. She stated that it has been a "hard lesson learned" and that she will "always disclose" in the future. Respondent noted that she prepares a lot of paperwork as a medical and physician assistant, and all of it is reviewed by her supervisors. She has never been disciplined for improper paperwork; on the contrary, her supervisors have found her to be thorough and efficient.

15. Arturo Villegas testified in support of his wife's application. He has been married to respondent for over 13 years, and they have known one another for 15 years.

Villegas feels that his wife is more mature today than she was years ago, and that he is, too. He states that, for the first couple of years after their children were born, they were still able to go out dancing, but not anymore. Villegas believes that respondent is a devoted mother and a good role model for their children.

16. Robert Cardoza is a real estate broker and the owner of Realty World University Associates. Cardoza submitted a letter on behalf of respondent's application. He states that he has known respondent for four years. Cardoza has reviewed the department's statement of issues, and discussed each of the alleged convictions with her. He states that, despite the convictions, he continues to believe that respondent will be an excellent sales associate with his company. Cardoza is willing to employ respondent with a restricted license, and to provide close supervision of her transactions.

17. 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), provides that a 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 licensed business or profession. 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 fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person” (subd. (a)(1)), “[t]he employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end” (subd. (a)(4)), “[d]oing any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent . . . of doing substantial injury to the . . . property of another” (subd. (a)(8)), or “[c]onduct which demonstrates a pattern of repeated and willful disregard of law” (subd. (a)(10)).

2. Business and Professions Code section 10177, subdivision (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. Often described as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowman, or to society in general” or as something “contrary to the accepted and customary rule of right and duty between man and man,” moral turpitude is “innately a relative concept depending upon both contemporary moral values and the degree of its inimical quality.”²

3. Respondent’s conviction for a violation of Penal Code section 484f, subdivision (2) (access card forgery), is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (a)(4), and (a)(8). Viewed in relation to respondent’s other offenses, this conviction is also substantially related under subdivision (a)(10). Theft is a crime of moral turpitude. This conviction, therefore, constitutes cause to deny respondent’s application under Business and Professions Code section 480, subdivision (a), and under Business and Professions Code section 10177, subdivision (b).

4. Respondent’s convictions for violations of Vehicle Code section 20002, subdivision (a) (hit and run – property damage), and Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level 0.08 percent or higher), are substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(8) and (a)(10). These crimes do not involve moral turpitude per se, and the facts and circumstances presented in this case do not establish moral turpitude. These convictions, therefore, constitute cause to deny respondent’s application under Business and Professions Code section 480, subdivision (a).

5. Respondent’s convictions for violation of Vehicle Code section 14601.1, subdivision (a) (driving while privilege revoked or suspended), are substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(10). Driving while one’s privilege is revoked or suspended is not a crime of moral turpitude. These convictions, therefore, constitute cause to deny respondent’s application under Business and Professions Code section 480, subdivision (a).

² *Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d 30, 36.

6. By answering "no" to question 25 on her license application, respondent a materially false statement of a fact required to be revealed in her application. Respondent's failure to disclose her convictions constitutes cause to deny her application for a real estate salesperson license under Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a).

7. With respect to her convictions, respondent has demonstrated substantial rehabilitation. It has been almost 12 years since respondent's last conviction; her most serious conviction – access card forgery – occurred over 18 years ago. She has completed the terms and conditions associated with all of her convictions, and she has had her felony conviction reduced to a misdemeanor and expunged. Respondent has been married for almost 13 years, and she and her husband are the parents of two young children. It is clear that respondent and her husband take their family obligations seriously – respondent is considering a career change from health care, in which she has made a significant investment, to real estate, so that she can have more flexibility to participate in her children's activities. Respondent earned her A.A. degree in 1997 and her physician assistant certificate in 2001. She has been continuously employed in the health care field since 1986, and her co-workers and supervisors speak highly of her work ethic, her determination, and her dependability.

Respondent's failure to disclose her convictions, however, is a recent and serious matter. Based upon respondent's explanation, her failure to disclose was not entirely innocent or inadvertent. The license application is clear that expunged convictions must be disclosed; if respondent was uncertain whether her felony conviction had been expunged, it was her obligation to find out, before certifying that the answers in her application were true. Because respondent's history includes both traffic citations and misdemeanors, it is unlikely that she confused her DUI conviction, or her hit and run conviction, with traffic citations. Unlike traffic citations, these convictions involved jail time, or community service in lieu of jail time, and court probation. On the other hand, respondent's testimony that she has been "in denial" about her past, and that her criminal history has been hard for her to own up to, is credible. Respondent has made significant gains in her life, both personally and professionally, over the past 12 years. Her reluctance to acknowledge her criminal history helps to explain her failure to disclose it.

Despite respondent's failure to disclose, the evidence as a whole justifies the conclusion that respondent can be trusted to complete documents honestly and accurately. Respondent recognizes and acknowledges that she made a serious mistake. She testified that she has learned a hard lesson about disclosure. Respondent's careful and complete disclosure of her convictions on her interview information statement does not take the place of the disclosure she should have made on her application; but, her statement supports her testimony that she now understands the level of disclosure that question 25 required, and it demonstrates her ability to respond appropriately. The fact that respondent's failure to disclose her convictions was prompted by embarrassment about her past does not excuse her nondisclosure, but it is important that her nondisclosure was not due to fundamental dishonesty. Indeed, respondent has worked as a medical or physician assistant for almost 20

years; like real estate, the health care profession places a premium on faithful and accurate reporting. Respondent has never been disciplined for inaccurate reporting, and she has established an outstanding reputation for honesty and integrity with her medical supervisors. Although respondent made a serious error on her real estate application, she is unlikely to make a similar mistake again.

It would not be contrary to the public interest to grant respondent a real estate license on a restricted basis.

ORDER

The application of respondent Jeanne Villegas 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 the 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 or 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 a course in real estate principles and one 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: March 3, 2006



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

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FILED
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DEPARTMENT OF REAL ESTATE

By K. Contreras

7
8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13 JEANNE VILLEGAS) H-9458 SF
14 Respondent.) STATEMENT OF ISSUES
15)

16 The Complainant, E. J. HABERER II, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against JEANNE VILLEGAS (hereinafter "Respondent"), also known
19 as Jeanne Santiago, is informed and alleges as follows:

20 I

21 Complainant, E. J. HABERER II, a Deputy Real Estate
22 Commissioner of the State of California, makes this Statement of
23 Issues against Respondent in his official capacity.

24 II

25 Respondent made application to the Department of Real
26 Estate of the State of California for a real estate salesperson
27 license on or about February 25, 2005, with the knowledge and

1 understanding that any license issued as a result of said
2 application would be subject to the conditions of Section 10153.4
3 of the Business and Professions Code (hereinafter "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 Respondent concealed and failed to disclose the convictions
8 described in Paragraphs IV, V, VI, VII, and VIII below.

9 IV

10 On or about May 19, 1987, in the Municipal Court of
11 California, County of Santa Clara, Respondent was convicted of
12 Access Card Forgery in violation of Penal Code Section 484f(2),
13 a felony and crime involving moral turpitude that bears a
14 substantial relationship under Section 2910, Title 10, California
15 Code of Regulations (hereinafter "Regulations"), to the
16 qualifications, functions, or duties of a real estate licensee.

17 V

18 On or about May 6, 1991, in the Municipal Court of
19 California, County of Santa Clara, Respondent was convicted of
20 Driving With a Suspended/Revoked License in violation of Vehicle
21 Code Section 14601.1a, a misdemeanor and crime involving moral
22 turpitude that bears a substantial relationship under Section
23 2910, Title 10, of the Regulations, to the qualifications,
24 functions, or duties of a real estate licensee.

25 VI

26 On or about May 15, 1992, in the Superior Court of
27 California, County of Santa Clara, Respondent was convicted of

1 Driving Under the Influence of Alcohol and/or Drugs with a Blood
2 Alcohol Content of 0.08 or Higher in violation of Vehicle Code
3 Section 23152(b), and of Hit and Run in violation of Vehicle Code
4 Section 20002(a), each count a misdemeanor and crime involving
5 moral turpitude that bears a substantial relationship under
6 Section 2910, Title 10, of the Regulations, to the
7 qualifications, functions, or duties of a real estate licensee.

8 VII

9 On or about March 23, 1993, in the Superior Court of
10 California, County of Santa Clara, Respondent was convicted of
11 Battery in violation of Penal Code Section 242, a misdemeanor
12 and crime involving moral turpitude that bears a substantial
13 relationship under Section 2910, Title 10, of the Regulations, to
14 the qualifications, functions, or duties of a real estate licensee.

15 VIII

16 On or about October 7, 1994, in the Municipal Court of
17 California, County of Santa Clara, Respondent was convicted of
18 Driving With a Suspended/Revoked License in violation of Vehicle
19 Code Section 14601.1a, a misdemeanor and crime involving moral
20 turpitude that bears a substantial relationship under Section
21 2910, Title 10, of the Regulations, to the qualifications,
22 functions, or duties of a real estate licensee.

23 IX

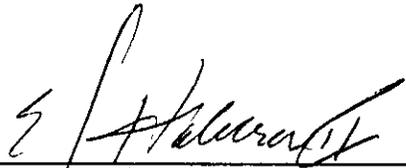
24 Respondent's failure to reveal in said application the
25 convictions set forth in Paragraphs IV, V, VI, VII, and VIII
26 above constitutes the procurement of a real estate license by
27 fraud, misrepresentation, or deceit, or by making a material

1 misstatement of fact in said application, which failure is cause
2 for denial of Respondent's application for a real estate license
3 under Sections 480(c) and 10177(a) of the Code.

4 IV

5 Respondent's criminal convictions, described in
6 Paragraphs IV, V, VI, VII, and VIII, individually and
7 collectively constitute cause for denial of Respondent's
8 application for a real estate license under Sections 480(a) and
9 10177(b) of the Code.

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

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17
18
19 
20 E.J. HABERER II
21 Deputy Real Estate Commissioner

22
23 Dated at Oakland, California
24 this 21st day of November, 2005.