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FILED

SEP 29 2011

DEPARTMENT OF REAL ESTATE

By *L. Trust*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

KELLY KRISTI CLARK,

Respondent.

No. H-9755 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 3, 2007, in Case No. H-9755 SF, a Decision was rendered revoking the real estate salesperson license of Respondent effective April 25, 2007, 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 May 19, 2007. On May 15, 2009, an Order Suspending Restricted Real Estate License was signed by the Commissioner in Case No.H-9755 SF, suspending Respondent's restricted real estate salesperson license effective May 15, 2009 for failure to complete the continuing education requirements associated with the terms and conditions of Respondent's restricted license. On March 11, 2011, Respondent's restricted real estate salesperson license was reinstated, and Respondent operated as a restricted licensee until the expiration of Respondent's license on May 18, 2011.

///

1 On July 20, 2010, Respondent petitioned for the removal of restrictions attaching
2 to Respondent's real estate salesperson license, and the Attorney General of the State of
3 California has been given notice of the filing of the petition.

4 I have considered Respondent's petition and the evidence and arguments in
5 support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the
6 requirements of law for the issuance to Respondent of an unrestricted real estate salesperson
7 license and that it would not be against the public interest to issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
9 reinstatement is granted and that a real estate salesperson license be issued to Respondent if
10 Respondent satisfies the following requirements:

- 11 1. Submits a completed application and pays the fee for a real estate
12 salesperson license within the 12 month period following the date of this Order; and
- 13 2. Submits proof that Respondent has completed the continuing education
14 requirements for renewal of the license sought. The continuing education courses must be
15 completed either (i) within the 12 month period preceding the filing of the completed
16 application, or (ii) within the 12 month period following the date of this Order.

17 This Order shall become effective immediately.

18 DATED: 8/13/11

19 BARBARA J. BIGBY
20 Acting Real Estate Commissioner

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FILED

MAY 21 2009

DEPARTMENT OF REAL ESTATE



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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-9755 SF
)	
KELLY KRISTI CLARK,)	
)	
Respondent)	
)	

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

(Continuing Education)

TO: KELLY KRISTI CLARK ("Respondent"):

On or about May 19, 2007, a restricted real estate salesperson license was issued by the Department of Real Estate to Respondent on the terms, conditions and restrictions set forth in the Stipulation and Agreement, effective April 25, 2007, in Case No. H-9755 SF. This Stipulation granted the right to the issuance of a restricted real estate salesperson license subject to the provisions of Section 10156.7 of the Business and Professions Code of the State of California, and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of said Code. Among those terms, conditions and restrictions, the Decision required Respondent, within nine (9) months after April 25, 2007, the effective date of

1 the Stipulation and Agreement, to present evidence satisfactory to the Real Estate Commissioner
2 that Respondent has, since the most recent issuance of an original or renewal real estate license,
3 taken and successfully completed the continuing education requirements of Article 2.5 of
4 Chapter 3 of the Real Estate Law for renewal of a real estate license, and provided that if
5 Respondent failed to satisfy this condition, the Commissioner may order suspension of the
6 restricted license until Respondent satisfies this condition.

7 As of April 29, 2008, Respondent has failed to submit proof satisfactory to the
8 Commissioner of satisfying this condition. The Commissioner has determined that Respondent
9 has failed to satisfy this condition, and as such, that Respondent is in violation of Section
10 10177(k) of the Business and Professions Code.

11 NOW, THEREFORE, IT IS ORDERED under authority of Section 10156.7 of the
12 Business and Professions Code of the State of California that the restricted real estate license
13 heretofore issued to Respondent and the exercise of any privileges thereunder is hereby
14 suspended until such time as Respondent provides proof satisfactory to the Commissioner that
15 Respondent has satisfied the condition, described above, or pending final determination made
16 after hearing (see "Hearing Rights" set forth below).

17 IT IS FURTHER ORDERED that all license certificates and identification cards
18 issued by the Department of Real Estate which are in the possession of Respondent be
19 immediately surrendered by personal delivery or by mailing in the enclosed self-addressed,
20 stamped envelope:

21 DEPARTMENT OF REAL ESTATE
22 ATTN: Flag Section
23 P. O. Box 187000
Sacramento, CA 95818-7000

24 HEARING RIGHTS: You have the right to a hearing to contest the
25 Commissioner's determination that you are in violation of Section 10177(k). If you desire a
26 hearing, you must submit a written request. The request may be in any form, as long as it is in
27 writing and indicates that you want a hearing. Unless a written request for a hearing, signed by

1 or on behalf of you, is delivered or mailed to the Department, Legal Section, at 2201 Broadway,
2 P. O. Box 187007, Sacramento, California 95818-7007, within twenty (20) days after the date
3 that this Order was mailed to or served on you, the Department will not be obligated or required
4 to provide you with a hearing.

5 This Order shall be effective immediately.

6 DATED: 5-15-09

7 JEFF DAVI
8 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

KELLY KRISTI CLARK,

Respondent.

Case No. H-9755 SF

OAH No. N2007010113

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on February 8, 2007.

Real Estate Counsel Daniel E. Kehew represented complainant Charles W. Koenig, a Deputy Real Estate Commissioner.

Respondent Kelly Kristi Clark was present and represented herself.

The matter was submitted for decision on February 8, 2007.

FACTUAL FINDINGS

1. Respondent Kelly Kristi Clark is presently licensed and has license rights under the Real Estate Law (Bus. & Prof. Code, pt. 1, div. 4) as a real estate salesperson.
2. On November 12, 2004, respondent was convicted in the United States District Court, Northern District of California, of a violation of section 846 of title 21 of the United States Code (conspiracy to possess with the intent to distribute methamphetamine), a felony. The offense is substantially related to the qualifications, functions, or duties of a real estate licensee as it involves the doing of an unlawful act with the intent to confer a financial or economic benefit on the perpetrator (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8)).
3. Respondent was sentenced to eight months imprisonment and ordered to pay a \$100 fine. Respondent completed the imprisonment, and paid the fine. On June 3, 2005, respondent was placed on five years' supervised release. As conditions of her release, respondent was ordered to participate in substance abuse treatment and testing.

Her probation officer reports that she is in full compliance with her probation, and that the supervised release should terminate on June 2, 2010.

4. The circumstances of the offense were that respondent participated in a methamphetamine selling operation for five to six months in order to obtain methamphetamine for her personal use.

5. Respondent was arrested for the offense on June 10, 2003. At that time, respondent had been a long time methamphetamine addict and a daily user. She believes that the FBI saved her life by arresting her. She accepted responsibility for her conduct at the time of her arrest, and she cooperated with authorities. She stopped using methamphetamine and she entered (and completed) a recovery program before being ordered to do so by the court. Other than a one-time relapse in September 2006, respondent has been clean and sober since her arrest.

6. Respondent has been attending the East Bay Community Recovery Project since November of 2005. Respondent continues to attend weekly drug and alcohol counseling. Respondent submitted documentation from her current counselor about her positive progress in the program. Respondent reported to the program, and to her probation officer, a one-time relapse in September 2006. Respondent immediately requested support from her counselor.

7. Respondent has been undergoing individual counseling since November 2005. Respondent submitted documentation from her current therapist demonstrating that they are working on the emotional issues that contributed to her substance abuse issues.

8. Respondent attends meetings of Narcotics Anonymous at least once a week. She has a sponsor.

9. From 1998 to 2000, respondent attended San Francisco City College. She obtained an associate of arts degree in liberal arts. From 2000 to 2004, respondent attended San Francisco State University. She did not complete a bachelor's degree.

10. Respondent obtained a real estate salesperson license in 1999. She was associated with Prudential Realty from 2000 to 2002 and with Coldwell Banker from 2000 to 2004. No evidence was presented regarding respondent's performance as a real estate salesperson during these years.

11. Respondent's salesperson license expired on November 11, 2004. The license was renewed on October 5, 2005. Respondent disclosed the conviction in connection with the renewal of her license.

12. Respondent has been associated with Montclair Better Homes Realty since November 21, 2005. Respondent works there on a full-time basis and is very happy working there.

Respondent submitted letters from three people associated with Montclair Better Homes Realty. Broker/Owner Mark Attarha attests that respondent has been a professional and hardworking agent. Agent A.D. Nassiri attests that respondent is hardworking, reliable and honest. Office Manager Karen Cundiff attests that respondent handles herself professionally and is mindful of the real estate laws and duties in her transactions.

13. Respondent is taking courses in real estate appraisal with the goal of obtaining a license as a real estate appraiser. Respondent is taking these courses in connection with her Individualized Plan for Employment through the California Department of Rehabilitation. Respondent submitted a letter from her Department of Rehabilitation counselor, Rosemary Weimer. Weimer attests that respondent is in compliance with her department's requirement that clients be in treatment for addiction.

14. Respondent is engaged to be married and lives with her fiancé. She has a 7-year-old daughter. She is the leader of her daughter's Girl Scout troop, and she is involved in the PTA at her daughter's school. Respondent and her daughter attend church at least twice monthly. Respondent attends a women's group in which she shares her addiction and life experiences. Respondent no longer associates with those she associated with at the time of the offense.

15. James Christopher Holeman has known respondent for about 20 years, and he is the godfather of respondent's daughter. Holeman testified in a credible manner that respondent has changed into someone who is reliable and who takes responsibility for her conduct.

16. Respondent's mother, Jacqueline Badenhause, also testified at hearing in a credible manner. She sees great changes in her daughter, and believes her daughter has learned her lesson.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), read together with Business and Professions Code section 490, subdivision (a), authorizes the Commissioner to suspend or revoke a real estate license if the licensee has been convicted of a felony that is substantially related to the qualifications, functions or duties of a real estate licensee. Cause exists to suspend or revoke respondent's real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b), read together with section 490, subdivision (a), by reason of the felony conviction set forth in Factual Finding 2.

2. In California Code of Regulations, title 10, section 2912, the Department has established criteria to be used in evaluating the rehabilitation of a licensee who has a criminal record. The burden is on respondent to show that she has sufficiently rehabilitated herself so that it would be appropriate to allow her to retain her real estate license. This is a close case. Respondent committed a serious offense for which she remains on supervised release until 2010. She had a relapse in 2006 and thus has not maintained sobriety for two years. Nevertheless, she has made a number of very positive steps in her rehabilitation: the conviction is more than two years old; she has a stable family life; and she has stable employment in real estate and has been performing professionally and with safety to the public. Respondent has a number of support systems in place which bodes well for the success of her recovery: she has weekly drug counseling; she has weekly psychotherapy focusing on substance abuse; she attends NA weekly; she has a sponsor; and she does not associate with the people she associated with when she was using methamphetamine. Respondent has the support of a Department of Rehabilitation counselor, and she is taking courses for her economic self-improvement. All things considered, it is determined that respondent has shown sufficient rehabilitation so that the public will not be put at risk by allowing her to be licensed on a restricted basis.

ORDER

All licenses and licensing rights of respondent Kelly Kristi Clark under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.6 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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.

3. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license;
and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

DATED: March 5, 2007



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings



1 DANIEL E. KEHEW, Counsel (SBN 231550)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789
5 -or- (916) 227-0425 (Direct)

FILED
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DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) H-9755 SF
13 KELLY KRISTI CLARK,)
14 Respondent.) ACCUSATION

15 The Complainant, CHARLES W. KOENIG, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against KELLY KRISTI CLARK (hereinafter "Respondent"),
18 is informed and alleges as follows:

19 I

20 Respondent is presently licensed and/or has license
21 rights under the Real Estate Law, Part 1 of Division 4 of the
22 Business and Professions Code (hereinafter "the Code") as a real
23 estate salesperson.

24 II

25 Complainant, CHARLES W. KOENIG, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation
27 against Respondent in his official capacity.

1 III

2 On or about November 12, 2004, in the United States
3 District Court for the Northern District of California, Respondent
4 was convicted of the crime of Conspiracy to Possess With Intent
5 to Distribute Methamphetamine in violation of 21 USC 846, a
6 felony involving moral turpitude and bearing a substantial
7 relationship under Section 2910, Title 10, California Code of
8 Regulations, to the qualifications, functions, or duties of a real
9 estate licensee.

10 IV

11 The facts alleged above constitute cause under Sections
12 490 and 10177(b) of the Code for suspension or revocation of
13 Respondent's license under the Real Estate Law.

14 WHEREFORE, Complainant prays that a hearing be
15 conducted on the allegations of this Accusation and that upon
16 proof thereof, a Decision be rendered imposing disciplinary
17 action against all licenses and license rights of Respondent
18 under the Code, and for such other and further relief as may be
19 proper under provisions of law.

20
21 
22 CHARLES W. KOENIG
23 Deputy Real Estate Commissioner
24

25 Dated at Sacramento, California
26 this 29th day of October, 2006.
27