

FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

AUG 13 2008

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Application of)
JACALYN EVE LEE,) NO. H-10304 SF
Respondent.) OAH NO. N-2008030831

DECISION

The Proposed Decision dated July 10, 2008, 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 SEP - 3 2008.

IT IS SO ORDERED 8-12-08

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JACALYN EVE LEE,

Respondent.

Case No. H-10304 SF

OAH No. 2008030831

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on May 27, 2008.

Angela L. Cash, Counsel, represented complainant.

Jacalyn Eve Lee was present and represented herself.

Submission of the matter was deferred to June 20, 2008, for receipt of further evidence, which was received, marked for the record and considered. The matter was submitted on June 20, 2008.

FACTUAL FINDINGS

1. Charles W. Koenig made the statement of issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. On May 24, 2005, Jacalyn Eve Lee (respondent) made application to the Department of Real Estate of the State of California (Department) for a real estate salesperson license with the knowledge and understanding that, pursuant to law, any license issued as a result of her application would be subject to the conditions of Business and Professions Code section 10153.4.
3. In response to Question 25 of her application, to wit: "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," respondent concealed and failed to disclose the conviction

set forth in Finding 4, below. Respondent did list her convictions in a subsequent document dated April 16, 2007.

4. On April 18, 2000, in the Superior Court of California, County of Marin, respondent was convicted of Driving Under the Influence in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor. This is not a crime involving moral turpitude on its face or by its facts and circumstances. Respondent was placed on probation. Her probation was successfully terminated March 10, 2004.

5. On April 26, 2004, in the Superior Court of California, County of Monterey, respondent was convicted of four counts of the crime of Non-Sufficient Fund Checks in violation of Penal Code section 476a, subdivision (a), misdemeanors and crimes involving moral turpitude, which are substantially related to the duties, qualifications, and functions of a real estate licensee.

Respondent was placed on three years probation and sentenced to thirteen months in jail. She completed her probation successfully on August 15, 2007.

6. Respondent is presently employed by Marin Acura. She is a licensed vehicle salesperson. Her license will expire in 2010 unless renewed. She has worked at Marin Acura for 15 months. Respondent presented letters from the General Manager, Used Car Manager, General Sales Manager, and Finance Director all attesting to respondent's honesty, integrity and commitment to help others. She also provided a letter from a realtor who attests to respondent's competence and professional nature.

7. Respondent also presented a letter from the broker/owner of Marin Realty Group. She is aware of respondent's past criminal record and is willing to supervise her under Marin Realty Group's broker license.

8. Respondent's conviction for insufficient checks arose out of a problem relationship with her ex-husband. He lied to her about his business finances and involved her in writing insufficient fund checks. Respondent accepts responsibility for her participation and has paid some restitution. She still has some restitution to pay.

9. A friend of respondent's testified at the hearing that respondent is honest and that respondent's ex-husband also "conned" \$3,000 from the witness. The witness corroborated respondent's testimony that much of the check fraud was respondent's ex-husband's responsibility. She also testified that respondent has changed her attitude.

10. Respondent volunteered for the Golden Gate Opera in 2007. She is presently involved with the Sausalito Cruising Club, which teaches sailing to members of her community.

11. Respondent has demonstrated sufficient rehabilitation to warrant a conditional restricted license. It would not be against the public interest to grant respondent a conditional restricted license.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 3 and 4, cause for denial exists pursuant to Business and Professions Code section 10177, subdivision (a)¹ (material misstatement of fact in the application).

2. By reason of the matters set forth in Finding 4, cause for denial does not exist pursuant to Business and Professions Code section 10177, subdivision (b). Respondent's conviction for driving under the influence is not a crime involving moral turpitude.

3. By reason of the matters set forth in Finding 5, cause for denial exists pursuant to Business and Professions Code section 10177, subdivision (b) (conviction of a crime involving moral turpitude, which is substantially related to the duties, qualifications and functions of a real estate licensee).

4. The matters in mitigation, extenuation and rehabilitation set forth in Findings 6 through 11 have been considered in making the following order.

ORDER

Respondent Jacalyn Eve Lee's application for a real estate salesperson license is denied; provided, however, a conditional restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of said 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 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

¹ Business and Professions Code section 480, subdivision (a) or (c) cannot be used as independent grounds for denial pursuant to *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554.

- (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 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 license is required.
- 4. Respondent's restricted real estate license is issued subject to the provisions of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen months of issuance of the restricted license, submit evidence satisfactory to the commissioner of successful completion, at an accredited institution, of a course in real estate practices 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 present satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen months after the date of its issuance. This 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: 7/10/09

Ruth S. Astle

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

FILED

FEB 21 2008

DEPARTMENT OF REAL ESTATE

By *K. Zini*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of)
12 JACALYN EVE LEE,) No. H-10304 SF
13 Respondent.) STATEMENT OF ISSUES
14)

15 The Complainant, Charles W. Koenig, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against JACALYN EVE LEE also known as Jacalyn Eve
18 Anderson and Jacalyn Eve Freeman (herein "Respondent"), alleges
19 as follows:

20 I

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

24 II

25 On or about May 24, 2005, Respondent made application
26 to the Department of Real Estate of the State of California
27 (herein "the Department") for a real estate salesperson license

1 with the knowledge and understanding that, pursuant to the
2 provisions of Section 10153.3 of the Business and Professions
3 Code, any license issued as a result of said application would
4 be subject to the conditions of Section 10153.4 of the
5 California Business and Professions Code (herein "the Code").

6 III

7 In response to Question 25 of said application, to
8 wit: "Have you ever been convicted of any violation of law?
9 Convictions expunged under Penal Code Section 1203.4 must be
10 disclosed. However, you may omit minor traffic citations which
11 do not constitute a misdemeanor or felony offense", Respondent
12 concealed and failed to disclose the conviction described in
13 Paragraph IV below.

14 IV

15 On or about April 18, 2000, in the Superior Court of
16 the State of California, County of Marin, Case Number CR108317A,
17 Respondent was convicted of the crime of Driving Under the
18 Influence in violation of Vehicle Code Section 23152(a), a
19 misdemeanor and a crime involving moral turpitude which bears a
20 substantial relationship under Section 2910, Title 10,
21 California Code of Regulations, to the qualifications, functions
22 or duties of a real estate licensee.

23 V

24 On or about April 26, 2004, in the Superior Court of
25 the State of California, County of Monterey, Case Number
26 SC128573B, Respondent was convicted of four counts of the crime
27 of Non-Sufficient Fund check in violation of Penal Code Section

1 476a(a), a misdemeanor and a crime involving moral turpitude
2 which bears a substantial relationship under Section 2910, Title
3 10, California Code of Regulations, to the qualifications,
4 functions or duties of a real estate licensee.

5 VI

6 In failing to reveal the conviction described in
7 Paragraph IV above, Respondent procured or attempted to procure
8 a real estate license by fraud, misrepresentation, or deceit, or
9 by making a material misstatement of fact in said application,
10 which constitutes cause for denial of Respondent's application
11 for a real estate license under Sections 480(c) and 10177(a) of
12 the Code.

13 VII

14 Respondent's criminal convictions, as described in
15 Paragraphs IV and V 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 Code.

18 WHEREFORE, Complainant prays that the above-entitled
19 matter be set for hearing and, upon proof of the charges
20 contained herein, that the Commissioner refuse to authorize the
21 issuance of, and deny the issuance of a real estate salesperson
22 license to Respondent, and for such other and further relief as
23 may be proper in the premises.

24 
25 CHARLES W. KOENIG
26 Deputy Real Estate Commissioner

26 Dated at Sacramento, California,
27 this 8th day of February, 2008.