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DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	DRE No. H-10626 SF
MANEQUA SHAVAUGHN ANTHONY,)	
)	OAH No. 200903108
Respondent.)	

DECISION AFTER REJECTION

This matter came on for hearing before Melissa G. Crowell, Administrative Law Judge, Office of Administrative Hearings, State of California, in Oakland, California, on June 25, 2009. The hearing date of June 21, 2009, on the first page of the Proposed Decision is incorrect.

Richard Uno, Counsel, represented the Complainant. The Respondent appeared without counsel.

Evidence was received, the record was closed, and the matter was submitted.

On July 8, 2009, the Administrative Law Judge rendered a Proposed Decision (hereafter "the Proposed Decision") which the Real Estate Commissioner declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent was notified that the case would be decided by the Real Estate Commissioner upon the record,

1 the transcript of the proceedings held on June 25, 2009, and upon written argument offered by
2 Respondent and Complainant.

3 Written argument was submitted by Complainant on September 15, 2009. No
4 written argument was submitted by Respondent.

5 I have given careful consideration to the record in this case, including the
6 transcript of proceedings of June 25, 2009, and written argument offered by Complainant.

7 The following shall constitute the Decision of the Real Estate Commissioner in
8 these proceedings.

9 FINDINGS OF FACT

10 1. Respondent is licensed by the Department as a real estate broker, License No.
11 01339951, and has been so licensed since February 9, 2005. Respondent is also licensed by the
12 Department as a Designated Corporate Officer under Jordan Financial Services, Inc., License No.
13 01783611, and has been so licensed since November 9, 2006.

14 2. Complainant, Joe M. Carrillo, filed the Accusation in his official capacity on
15 March 12, 2009.

16 3. Respondent timely filed a Notice of Defense to the Accusation, pursuant to
17 Government Code Section 11506. The matter was set for an evidentiary hearing before an
18 Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative
19 agency of the State of California, pursuant to Government Code Section 11500, et seq.

20 Respondent's Conviction

21 4. On or about August 25, 2008, in the Superior Court of the State of California,
22 County of Contra Costa, Case No. 05-080301-5, Respondent, upon a plea of no contest, was
23 convicted of violating Section 8228.1 of the California Government Code (Improper Release of a
24 Notary Book), a misdemeanor. Respondent was placed on one year probation, ordered to pay
25 fees and fines of \$200.00, perform community service and to surrender her notary commission.

26 The facts and circumstances surrounding the conviction are that an agent whom
27 Respondent was supervising at the time unlawfully used the victim's identity, income and other

1 information to obtain a loan to purchase a residence. The victim's name was forged in
2 Respondent's notary book, which she loaned to her agent. The agent obtained cash from the
3 loan, while there is evidence that Respondent obtained a loan fee of over \$5,000 as well as a
4 share of the commission. The plan was to sell the residence and pocket any net proceeds from
5 the sale.

6 Although Respondent was able to plea to only the single misdemeanor, she, along
7 with the co-conspirators, was charged with forgery, grand theft by trick or device, identity fraud
8 and filing a false/forged instrument.

9 Respondent is currently married and has two children.

10 Respondent is active in church.

11 Respondent is taking nursing courses at a community college.

12 Respondent provided twelve letters of support at the hearing; several from family
13 members.

14 LAW APPLIED TO THE FACTS

15 The Department's Accusation alleges that Respondent was convicted of a crime
16 which bears a substantial relationship to the qualifications, functions or duties of a real estate
17 licensee in violation of Sections 490 and 10177(b) of the California Business and Professions
18 Code (hereafter "the Code").

19 Section 490 of the Code provides, in relevant part:

20 ...a board may suspend or revoke a license on the ground
21 that the licensee has been convicted of a crime, if the crime
22 is substantially related to the qualifications, functions, or
23 duties of the business or profession for which the license
was issued....A conviction within the meaning of this
section means a plea or verdict of guilty....

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1 Section 10177 provides, in relevant part:

2 The commissioner may suspend or revoke the license of
3 a real estate licensee...who has done any of the following:
4 ...[Section] (b) Entered a plea of guilty or nolo contendere
5 to, or been found guilty of, or been convicted of, a felony
6 or a crime involving a crime substantially related to the
7 qualifications, functions or duties of a real estate licensee.

8 Respondent's Conviction is Substantially Related to the
9 Qualifications of a Real Estate Licensee

10 The crime of which Respondent was convicted is substantially related to the
11 qualifications, functions or duties of a real estate licensee. Title 10, Section 2910, subdivision (a)
12 of the California Code of Regulations provides, in relevant part:

13 (a) When considering whether a license should be denied,
14 suspended or revoked on the basis of the conviction of
15 a crime, or on the basis of an act described in Section
16 480(a)(2) or 480(a)(3) of the Code, the crime or act shall
17 be deemed substantially related to the qualifications,
18 functions or duties of a licensee of the Department within
19 the meaning of Sections 480 and 490 of the Code if it
20 involves:

21
22 (8) Doing of any unlawful act with the intent of conferring
23 a financial or economic benefit upon the perpetrator or with
24 the intent or threat of doing substantial injury to the person
25 or property of another

26 Respondent's conviction for improper release of a notary book is substantially
27 related under Section 2910(a)(8) of the California Code of Regulations. Respondent's actions
clearly conferred a financial or economic benefit to her in the form of fees and a share of the
commission. In addition, the failure to properly control her notary book resulted in substantial
injury to the victim by way of the illegal use of the victim's identity, income and other
information to obtain a loan to purchase real property.

Burden of Proof

The burden of proof is clear and convincing evidence to a reasonable certainty
(*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853). The Department

1 has met this burden. As discussed above, Respondent has been convicted of a crime that is
2 substantially related to the qualifications, functions or duties of a real estate licensee.
3 Consequently, there are grounds for the revocation of Respondent's license under Sections 490
4 and 10177(b) of the Code.

5 Public Purpose of Disciplinary Action

6 Section 10050 of the Code provides that, "It shall be the principal responsibility of
7 the commissioner to enforce all laws in this part...in a manner which achieves the maximum
8 protection for the purchasers of real property and those persons dealing with real estate
9 licensees." The proposed discipline of Respondent's license must be considered in that context.
10 When the Commissioner denies, suspends or revokes a license based on a criminal conviction
11 that involves moral turpitude, it is a conclusion that the applicant or licensee has engaged in acts
12 that characterize him or her as being unfit or unsuitable for the particular real estate license in
13 question. (*Golde v. Fox* (1979) 98 Cal.App.3d 167).

14 Rehabilitation

15 Section 2912 of the California Code of Regulations provides the Criteria of
16 Rehabilitation, which is used by the Commissioner of the Department of Real Estate to help
17 determine to what extent a Respondent convicted of a crime has been rehabilitated.

18 Rehabilitation is not an event but rather a process at earning a second chance. In relation to
19 Section 2912 Commissioner's Regulations, Respondent has presently completed the following
20 factors toward rehabilitation:

21 Section 2912(a) – Passage of Time. Respondent's conviction occurred
22 approximately one and a half years ago. The evidentiary significance of a licensee's misconduct
23 is diminished by the passage of time and by the absence of similar misconduct (*Kwasnik v. State*
24 *Bar* (1990) 50 Cal.App3d 1060, 1070). A truer indication of rehabilitation is demonstrated by
25 sustained conduct over an extended period of time (*In re Mena* (1995) 11 Cal.4th 975).

26 Section 2912(b) – Restitution. This was not an issue.

27 ///

1 Section 2912(c) – Expungement. At the time of the hearing on June 25, 2009,
2 Respondent stated she was in the process of having her conviction expunged.

3 Section 2912(d) – Expungement. This was not an issue.

4 Section 2912(e) – Probation. According to the court records, Respondent was on
5 probation until August 25, 2009. The Court has stated in *In re Gossage* (2000) 23 Cal.4th 1080,
6 that true rehabilitation cannot occur until probation has terminated.

7 Section 2912(f) – Abstinance from Alcohol or Drugs. This was not an issue.

8 Section 2912(g) – Payment of Fines. Respondent paid her fines.

9 Section 2912(h) – Correction of Business Practices. Respondent fired the agent
10 that defrauded the victim.

11 Section 2912(i) – Social and Business Relationships. There is no evidence that
12 Respondent has changed her social and business relationships.

13 Section 2912(j) – Stability of Family. Respondent is currently married and lives
14 with her two children.

15 Section 2912(k) – Education. Respondent is taking community college courses to
16 better herself.

17 Section 2912(l) – Community Involvement. Other than church, there is no
18 evidence that Respondent contributes her time to the community.

19 Section 2910(m) – Change of Attitude. Respondent expressed some remorse for
20 her past misconduct, but minimized the facts, characterizing the fact that her notary book and
21 stamp were used to help defraud the victim of thousands of dollars, as “trusting the wrong
22 person.”

23 It appears that Respondent has satisfied some of the criteria of rehabilitation, and
24 only recently completed her probation. At this point, an insufficient amount of time has passed
25 since Respondent completed her period of probation to ascertain any true level of rehabilitation.
26 In addition, any claim by Respondent of rehabilitation must be balanced in the context of her

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1 crime, an act that resulted in and was part of a major fraud. At this point, Respondent simply has
2 not established her full rehabilitation.

3 When all the facts and circumstances are weighed and balanced, it would be
4 contrary to the public interest and welfare to allow respondent to remain licensed as a real estate
5 broker and designated corporate officer.

6 ORDER

7 All licenses and license rights of Respondent Manequa Shavaughn Anthony under
8 the Real Estate Law are hereby revoked.

9 The Decision suspends or revokes one or more real estate licenses on ground of
10 the conviction of a crime.

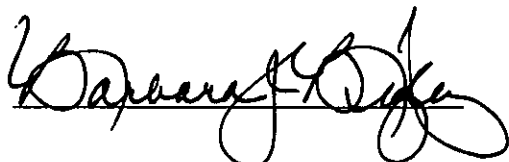
11 The right to reinstatement of a revoked real estate license or to the reduction of a
12 suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522
13 and a copy of the Commissioner's Criteria for Rehabilitation are attached hereto for the
14 information of Respondent.

15 This Decision shall become effective at 12 o'clock noon on

16 NOV 30 2009

17 IT IS SO ORDERED 11-4-09

18 JEFF DAVI
19 Real Estate Commissioner

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21 BY: Barbara J. Bigby
22 Chief Deputy Commissioner
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FILED

JUL 29 2009

DEPARTMENT OF REAL ESTATE

By K. Max

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

MANEQUA SHAVAUGHN ANTHONY,

Respondent.

No. H-10626 SF
OAH No. 2009031308

NOTICE

TO: MANEQUA SHAVAUGHN ANTHONY, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 8, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 8, 2009, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on June 21, 2009, and any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of June 21, 2009, at the Sacramento


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1 office of the Department of Real Estate unless an extension of the time is granted for good cause
2 shown.

3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Sacramento office of the
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 7-28-09

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8 JEFF DAVI
9 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MANEQUA SHAVAUGHN ANTHONY,

Respondent.

Case No. H-10626 SF

OAH No. 2009031308

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 21, 2009.

Richard Uno, Counsel, represented complainant Joe M. Carillo, a Deputy Real Estate Commissioner of the Department of Real Estate.

Respondent Manequa Shavaughn Anthony was presented and represented herself.

The record was left open for respondent to submit letters of reference and educational certificates (by July 3, 2009) and for complainant to file a written response (by July 10, 2009). Respondent timely submitted 12 letters, which were marked as a group exhibit B and admitted as administrative hearsay. Respondent timely submitted 19 educational certificates, which were marked as group exhibit C, and admitted in evidence. By facsimile letter dated July 3, 2009, complainant confirmed receipt of the letters and certificates. The record was closed and the matter was submitted for decision on July 3, 2009. Two additional letters submitted by respondent after July 3, 2009, were marked for the record as Exhibit D, but were not considered.

FACTUAL FINDINGS

1. Respondent Manequa Shavaughn Anthony is presently licensed and has license rights under the Real Estate Law (Bus. & Prof. Code, div. 4, pt. 1) as a real estate broker. Respondent was initially licensed as a real estate broker in 2005. She currently holds an officer license under Jordan Financial Services, Inc.

2008 Criminal Conviction

2. On August 25, 2008, respondent was convicted in Contra Costa County, on her plea of no contest, of violating Government Code section 8228.1 (improper release of a notary book), a misdemeanor. This offense is substantially related to the qualifications, functions, or duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(2) (making of a false statement).

Imposition of sentence was suspended and respondent was placed on court probation for one year on terms and conditions, which included that she surrender her notary public commission, perform 40 hours of community service, and pay stated fines and fees.

3. Although respondent is on probation until August 2009, she has applied for an early termination of probation and to have the conviction set aside pursuant to Penal Code section 1203.4.

4. The offense committed by respondent was part of a larger fraudulent scheme committed by one of her real estate agents, Jayme Renee Hutchins. Respondent allowed Hutchins to use her notary public journal in connection with two signatures on a grant deed; respondent wrote the names in her notary book without having either person personally appear before her and without personally certifying their identities.

5. Respondent was not aware of the fraudulent scheme, and trusted Hutchins, who was related to her by marriage. Respondent fully admits that her conduct was wrong and irresponsible. She allowed Hutchins to use her notary book because Hutchins was anxious to close the deal and respondent had to be somewhere and did not have the time to personally witness the signature. She understands that her misconduct aided the scheme which resulted in a fraudulent real estate transaction.

6. Respondent terminated Hutchins immediately when she learned of her misconduct.

7. Respondent has only one agent in her firm, which is her aunt, Michelle Lorraine Delgado Dupree. Dupree testified at hearing in support of respondent's good character and mentoring abilities.

8. Respondent is 31 years old. She recently married, and she has a baby and an eight-year-old son. She is active in her church. She submitted 12 letters from family members and friends who attest to her honesty and general good character.

9. Respondent is currently attending community college to complete classes toward becoming a licensed vocational nurse and a registered nurse.

10. Respondent testified at hearing in a manner consistent with one who is telling the truth and has accepted responsibility for her actions.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 10177, subdivision (b), read together with Business and Professions Code section 490, the Commissioner may suspend or revoke a real estate license if the licensee has been convicted of a crime that bears a substantial relationship to the licensed activity. Cause exists to suspend or revoke respondent's real estate license by reason of her conviction of improperly releasing her notary book, an offense that is substantially related to the qualifications, functions, or duties of a real estate licensee.

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 committed a criminal offense. The burden is on respondent to show that she is sufficiently rehabilitated so that it would be appropriate to allow respondent to remain a licensee. Respondent committed an offense which involved a serious breach of her duties as a notary public and for which she remains on probation. In addition, respondent's conduct assisted (albeit unintentionally) the commission of a fraudulent real estate transaction by one of the agents respondent was legally obligated to supervise. For these reasons, it would not be appropriate to continue to allow respondent to be licensed as a real estate broker.

Nevertheless, the purpose of this proceeding is not to further punish respondent for her criminal conduct (*Donaldson v. Department of Real Estate, supra*, 134 Cal.App.4th 948, 958, fn. 10), but to ensure that real estate licensees will be honest, truthful, and worthy of the fiduciary responsibilities they bear (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402). Respondent has presented sufficient evidence of rehabilitation to warrant her licensure as a restricted real estate salesperson. A requirement of her restricted licensure will be taking and passing the Professional Responsibility Examination.

ORDER

All licenses and licensing rights of respondent Manequa Shavaughn Anthony as a real estate broker under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if she 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

not adopted

of this decision. 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 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, 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.
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 not be eligible to apply for the issuance of an unrestricted real estate license or 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.
4. 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.
5. Respondent shall, within six months from the effective date of this decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.
6. 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

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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.

DATED: July 8, 2009

Melissa Crowell

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-2380

FILED

MAR 1 8 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

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

10 * * *

11 In the Matter of the Accusation of)
12 MANEQUA SHAVAUGHN ANTHONY,) H-10626 SF
13 Respondent.) ACCUSATION
14 _____)

15 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner
16 of the State of California, for cause of Accusation against MANEQUA SHAVAUGHN
17 ANTHONY, (hereinafter "Respondent"), is informed and alleges as follows:

18 1

19 Complainant makes this Accusation against Respondent in his official capacity.

20 2

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

24 3

25 On or about August 25, 2008, in the Superior Court of the State of California,
26 County of Contra Costa, Respondent was convicted of violating Section 8228.1 of the
27 California Government Code (Improper Release of a Notary Book), a misdemeanor and a crime

1 which bears a substantial relationship under Section 2910, Title 10, California Code of
2 Regulations, to the qualifications, functions or duties of a real estate licensee.

3 4

4 The facts alleged in Paragraph 3, above, constitute cause under Section 10177(b)
5 and Section 490 of the Code for suspension or revocation of Respondent's license under the
6 Real Estate Law.

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

11 
12 _____
13 JOE M. CARRILLO
14 Deputy Real Estate Commissioner

14 Dated at Sacramento, California,
15 this 12 day of March, 2009.

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