

FILED

SEP 16 2010

DEPARTMENT OF REAL ESTATE

By P. Henry

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)
JESSICA MARIE WALSH,)
Respondent.)

NO. H-10884 SF
OAH NO. 2010041282

DECISION

The Proposed Decision dated July 26, 2010, 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

OCT 06 2010

IT IS SO ORDERED 9/13/2010

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JESSICA MARIE WALSH,

Respondent.

Case No. H-10884 SF

OAH No. 2010041282

PROPOSED DECISION

Administrative Law Judge Dianna L. Albin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 16, 2010.

Department of Real Estate Counsel Kenneth C. Espell represented Complainant E.J. Haberer II, Deputy Real Estate Commissioner.

Respondent Jessica Marie Walsh was present and represented by Frank M. Buda, Esq.

The record was held open until July 7, 2010, for submission of briefs on the issue of the admissibility of Complainant's exhibit 3B, an unpublished appellate opinion arising from the appeal of respondent's criminal conviction. Mr. Espell's brief was marked for identification as exhibit 8. Mr. Buda's brief was marked for identification as exhibit K. The unpublished appellate decision contained in what was marked as complainant's exhibit 3B, is inadmissible pursuant to California Rules of Court, rule 8.1115 (a) and (b). The unpublished appellate decision is not relevant to the issue presented at this administrative hearing. As such, Complainant's exhibit 3B is not admitted into evidence.

The record was closed and the matter was submitted on July 7, 2010.

FACTUAL FINDINGS

1. On March 4, 2009, the Department of Real Estate (Department) received an application for a real estate salesperson license from respondent Jessica Marie Walsh. Respondent appealed the Department's denial of her application and filed a notice of defense.

2. On May 23, 2003, in Santa Clara County Superior Court, respondent was convicted of violating Penal Code section 245, subdivision (a)(1)¹ (assault with a deadly

¹ The Statement of Issues was amended at hearing to reflect the correct Penal Code conviction section as section 245, subdivision (a)(1).

weapon), and Penal Code section 12020, subdivision (a) (carrying a dirk or dagger concealed on the person), both felonies, which bear a substantial relationship to the qualifications, functions, or duties of a real estate licensee. Respondent was sentenced to prison for a term of four years and ordered to pay restitution in the amount of \$1,000. While in prison, respondent paid her restitution, she was discharged from parole on June 14, 2009.

3. The facts and circumstances of the offenses are that on March 17, 2002, respondent was involved in a physical altercation with another girl during which respondent stabbed the girl multiple times with a knife.

4. Respondent attributes her conduct to a period between December of 2001 and March of 2002, during which she associated with the wrong crowd, began using crystal methamphetamine and her life spun out of control. Prior to this time, respondent was living with her mother, active in sports, received good grades in high school, and was a volunteer and the vice president of a community service organization. Respondent had no prior history of criminal activity or drug use. After graduating from high school in June of 2001, respondent was working full time at Fidelity Title, had recently purchased her first car and was engaged to her childhood sweetheart.

In December of 2001, respondent was 19 years old when her relationship with her fiancé ended and she sought support from the wrong crowd who introduced her to drugs and alcohol. In March of 2002, she was kicked out of her mother's home and was living in her car on the street. Respondent described her life during this time as crazy. She was placing herself in unsafe situations using drugs and isolating herself from her friends and family.

5. After the March 2002 assault, respondent realized she had a substance abuse problem and promptly checked into a 30-day inpatient treatment facility. A certificate from Support Systems Homes reflects respondent's completion of a 30-day inpatient residential treatment program on May 4, 2002. Following the inpatient program respondent attended an outpatient treatment program for six weeks and daily Alcoholics Anonymous (AA) meetings for one year. Respondent does not currently consider herself an alcoholic or drug addict. She does not currently attend any alcohol or substance abuse counseling and believes her conduct and the use of drugs and alcohol was an isolated period of four months. Respondent feels that the treatment she received and her time in prison provided her with the skills, motivation and insight into her own behavior that will allow her to stay away from drugs. Her current support system consists of family and friends, with whom she talks with and seeks counsel from. She has not used illicit drugs since 2002. Respondent no longer associates with the same group of people she did in March 2002.

6. Respondent attributes her four years in prison with making her a better person. She was forced to reflect on her life and the path drugs were leading her down. While in prison, respondent was surrounded by women who used drugs and saw the way their lives had been ruined. Prison made her grow up fast and she is not the same person today that she was when she entered prison. Respondent acknowledges that her decision to use a knife and inflict injury on another person was wrong and was not justified under any circumstances.

Respondent has not experienced the same level of stress that culminated in the assault but she has skills and a plan not to engage in verbal disputes. In the event a stressful confrontation arises she will walk away or call the police. Respondent admits responsibility for her crime and deeply regrets seriously hurting another person. Respondent states she will live for the rest of her life knowing that in making her poor choices she seriously injured another person. Respondent was credible in her testimony.

7. Respondent is currently 27 years old and has been employed at Outback Steakhouse since May of 2008. She works as a server at an establishment that serves alcohol and she is responsible for interactions with the public, serving customers handling and balancing cash accounts. A letter submitted by her manager, Shawn Haney, acknowledges respondent's prior conviction and parole status and notes a flawless attendance record with zero disciplinary problems. Haney describes respondent as being a customer favorite who demonstrates responsibility and leadership and he fully endorses respondent's pursuit of a real estate salesperson license.

She is also employed as an assistant by her mother, Elizabeth A. Walsh, a real estate broker. Respondent's primary responsibilities as an assistant to Walsh are answering phones and interacting with the public. She has continued her education and completed three, 45-hour real estate classes.

8. Respondent has re-established her relationship with her mother, whom she is currently living with, and her father. Respondent fully disclosed her convictions to the Department and has had no subsequent criminal arrests or convictions. Respondent has raised money and participated in the San Francisco Aids walkathon, as well as, a softball tournament to raise money for the Make-a-Wish Foundation.

9. Elizabeth A. Walsh, was present and testified at hearing. Respondent's experience with drugs and her criminal conviction occurred during a four month period of time. Walsh described this period as a complete detour that did not reflect the person respondent had been prior to using drugs. Between December of 2001 and March of 2002, Walsh became aware of respondent's drug use and gave her an ultimatum to either stop using drugs or to leave the house. Since respondent's release from prison, Walsh has noticed a difference in respondent as a person. Respondent has accepted responsibility for her actions, she has not used drugs since 2002, and repaid Walsh's loan for respondent's restitution payment. Walsh has been involved in the real estate business for approximately 25 years and observes respondent on a daily basis. Walsh is willing to closely supervise respondent in the event she is issued any form of license by the Department.

10. Colleen Gallagher was present and testified at hearing that respondent worked for her on two occasions. The first was prior to prison when she worked as a real estate assistant and Gallagher found respondent to be reliable, honest, trustworthy, and punctual and the best assistant she had ever had. Following respondent's release from prison, respondent was hired to watch Gallagher's two young sons ages four and six. At no time while respondent cared for her children was Gallagher concerned for their safety or welfare.

Based on her observations of respondent, Gallagher does not believe respondent currently poses a threat of violence to the public. Respondent fully informed Gallagher about her conviction, prison and parole and has expressed her regret for hurting another person.

11. Several letters from family, friends and former employers were submitted at hearing. These letters contain shared themes of respondent's responsibility for her conduct and remorse for causing harm to another person, as well as describing respondent as possessing integrity, a great work ethic and honesty.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 480, subdivision (a), the Commissioner may deny an application for a real estate salesperson license if the applicant has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the licensed activity. As a separate cause for denial, the Commissioner, pursuant to Business and Professions Code section 10177, subdivision (b), may deny an application for a real estate salesperson license if the applicant has been convicted of a felony.

Pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), conviction of an unlawful act with the intent or threat of doing substantial injury to the person of another, is substantially related to the qualifications, functions or duties of a real estate licensee. Respondent's convictions for assault with a deadly weapon and carrying a concealed knife are substantially related to the qualifications, functions or duties of a real estate licensee under section 2910, subdivision (a)(8), because they involve the intent or threat of doing substantial injury to another person.

As set forth in Findings 2 and 3, cause exists to deny respondent's license application under Business and Professions Code section 480, subdivision (a), as well as, section 10177, subdivision (b).

2. The Department's criteria of rehabilitation are set forth in California Code of Regulations, title 10, section 2911, and the relevant sections have been considered. Respondent was convicted of serious crimes and completed parole less than two years ago. However, respondent has accepted full responsibility for her actions and acknowledges she was unjustified in using a knife. It has been more than seven years since respondent's felony convictions of assault with a deadly weapon and use of a concealed knife. Respondent's employment as a care provider for two young boys, and her current job which that involves working directly with the public, demonstrate she is not a threat to the public. Respondent has successfully completed her parole and paid her restitution. She has not used illicit drugs in over eight years, and has reunited with her family and currently lives with her mother. She has a new group of friends and respondent has participated in charitable events. Respondent has demonstrated that she has had a change in her attitude from that which existed at the time of her conviction. The facts and circumstances in this case do not

demonstrate respondent is a habitual offender. Respondent appears to have involved herself in an isolated occurrence of drug involvement and poor decisions spanning a period of approximately four months. Respondent has made great progress toward full rehabilitation.

The ultimate question is whether respondent poses a threat to the real estate buying public. The answer is no. For the reasons set forth in Findings 4 through 9, it would not be contrary to the public interest to allow respondent to be issued a restricted real estate salesperson license.

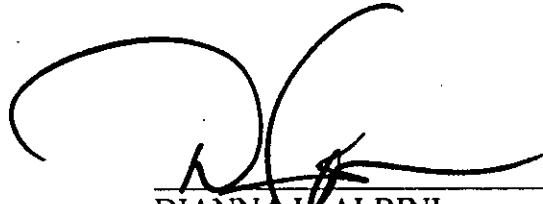
ORDER

The application of respondent Jessica Marie Walsh for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to her 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 that 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. 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; or
 - b. 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 of the 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 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 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
real estate license is required.

DATED: 7/24/10



DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings

FILED

MAR 25 2010

DEPARTMENT OF REAL ESTATE

By *[Signature]*

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6
7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Application of)
11) NO. H-10884 SF
12) STATEMENT OF ISSUES
13 JESSICA MARIE WALSH)
14 Respondent.)
15)

16 The Complainant, E.J. HABERER II, in his official capacity as a Deputy Real
17 Estate Commissioner of the State of California, for this Statement of Issues against JESSICA
18 MARIE WALSH, (hereinafter "Respondent"), is informed and alleges as follows:

19 1

20 On or about March, 4, 2009, Respondent made application to the Department of
21 Real Estate of the State of California for a real estate salesperson license.

22 2

23 On or about May 23, 2003, in the Santa Clara County Superior Court, State of
24 California, Case No. CC 242923, Respondent was convicted of violating Section 1202(a) of the
25 California Penal Code (Assault with a Deadly Weapon), a felony which bears a substantial
26 relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications,
27 functions, or duties of a real estate licensee.

On or about May 23, 2003 in the Santa Clara County Superior Court, State of California, Case No. CC 242923, Respondent was convicted of violating 12020(a) of the California Penal Code (Carrying a Dagger Concealed on the Person), a felony which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

Respondent's conviction, as alleged in Paragraph 2 and 3 above, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

WHEREFORE, the 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 under other provisions of law.



E.J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 4th day of March, 2010.