


FILED

JAN - 4 2012

BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA



* * *

In the Matter of the Application of)	DRE No. H-11186 SF
JOANN PHAT WEBER,)
)	OAH No. L-2011100537
))
Respondent.)
))

DECISION

The Proposed Decision dated December 1, 2011, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following correction is made:

Factual Findings, Page 1, Paragraph number "2", "March 18, 2010", is changed to "March 14, 2011".

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. 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 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 for the information of respondent.

This Decision shall become effective at 12 o'clock noon on **JAN 25 2012**.

IT IS SO ORDERED

12/29/2011

BARBARA J. BIGBY
Acting Real Estate Commissioner


By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JOANN PHAT WEBER,

Respondent.

Case No. H-11186 SF

OAH No. 2011100537

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter on November 28, 2011, in Oakland, California.

Richard K. Uno, Counsel, Department of Real Estate (department), represented complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California.

Randy Sullivan, Attorney at Law, represented respondent who was present.

The matter was submitted on November 28, 2011.

FACTUAL FINDINGS

1. E. J. Haberer II made the statement of issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. On March ~~18, 2010~~^{14, 2011}, respondent Joann Phat Weber applied to the department for a real estate salesperson license.
3. On March 18, 2010, in the Superior Court of the State of California, County of Santa Clara, respondent was convicted of violating Penal Code sections 485/488 (appropriating lost property/petty theft), Business and Professions Code section 25662, subdivision (a) (minor in possession of alcohol), and Penal Code section 148.9 (false information to a peace officer), all misdemeanors. Both the appropriating lost property and the false information offenses are substantially related to the duties, qualifications and functions of a real estate licensee and involve dishonesty. Minor in possession of alcohol (respondent was 20 years old) is not substantially related to the duties, qualifications and functions of a real estate licensee.

4. The imposition of sentence was suspended and respondent was placed on court probation for a period of two years on terms and conditions that included paying fines and fees of about \$600.

5. The facts underlying the offenses were that on November 30, 2006, respondent was in a parked car with an open container of alcohol when two officers approached. When she was asked for her identification she gave the officers a driver's license that was not hers. She lied to the officers about her true identity. It should be noted that there was no actual theft of any property. Respondent was in possession of a driver's license that was not hers.

6. Respondent has met all the terms and conditions of her probation to date and has paid the fine and fees.

Respondent's Evidence

7. Respondent is employed as an office manager at Midtown Realty in Palo Alto. She has been employed there since January 2008. Her employer testified at the hearing. He finds her to be an outstanding employee. She handles over a million dollars a year in accounts. He knows about the convictions and is willing to supervise respondent closely.

8. This incident occurred five years ago. Respondent was twenty years old at the time. She is now 25 years old and has matured. She is married now and a responsible member of her family and community. She is active in a teen organization helping youth to stay on the right path.

9. Respondent clearly understands that what she did was wrong. This act clearly does not reflect respondent's character. While it is true that she is still on probation, there is nothing more respondent can do to show that she is rehabilitated. She has not had any criminal involvement before or after this event. She has lived a productive and honest life since this incident. It is extremely unlikely that anything like this will ever occur again. It would not be against the public interest to allow respondent to be granted a restricted license.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), authorizes the denial of a license 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. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the denial of a license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions and duties of a licensee of the Department of Real Estate.

2. California Code of Regulations, title 10, section 2910, sets for 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)(4)). Respondent's convictions for being in possession of false identification and lying to the police are therefore substantially related to the qualifications, functions or duties of a real estate licensee. By reason of the matters set forth in Findings 3 and 4, these convictions constitute cause to deny respondent's application for a real estate salesperson license pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

3. In California Code of Regulations, title 10, section 2911, the department has established criteria to be used in evaluating the rehabilitation of an applicant 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 her to obtain a real estate salesperson license. Respondent's convictions, while they involve dishonesty, were not done to hurt anyone. She has clearly learned her lesson and is extremely unlikely to do anything unlawful again. Five years have passed since the offences occurred and respondent has not done anything unlawful.

4. The purpose of this proceeding is not to further punish respondent for her criminal conduct (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 958, fn. 10), but to ensure that real estate salespersons 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 demonstrated that she is such a person.

5. The matters set forth in Findings 3 through 9, have been considered in making the following order.

ORDER

Respondent Joann Phat Weber's application for a real estate salesperson license is hereby denied. However, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to the 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 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) 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 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.

DATED:

12/1/11

Ruth S. Astle

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

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Dept. of Real Estate

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SACRAMENTO LEGAL

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) 227-0789
6 (916) 227-2380 (Direct)

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AUG - 9 2011

DEPARTMENT OF REAL ESTATE
By R. Mar

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

10 * * *

11 In the Matter of the Application of)
12 JOANN PHAT WEBER,)
13 Respondent.)

No. H-11186 SF

STATEMENT OF ISSUES

14
15 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of
16 the State of California, for Statement of Issues against JOANN PHAT WEBER, also known as
17 "Joann Phat Phanmaha", (Respondent), alleges as follows:

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19 Complainant makes this Statement of Issues in his official capacity.

20 2

21 On or about March 14, 2011, Respondent made application to the Department of
22 Real Estate of the State of California (herein "the Department") for a real estate salesperson
23 license.

24 3


25 On or about March 10, 2011, in the Superior Court of the State of California,
26 County of Santa Clara, Case No. CC 652147, Respondent was convicted of violating Section
27 485/488 of the California Penal Code (Appropriating Lost Property/Petty Theft), Section

1 25662(a) of the California Business and Professions Code (Minor in Possession of Alcohol)
2 and Section 148.9 of the Penal Code (False Information to Peace Officer), all misdemeanors
3 and crimes which bear a substantial relationship under Section 2910, Title 10, California Code
4 of Regulations to the qualifications, functions or duties of a real estate licensee.

5 4

6 Respondent's criminal convictions, as described in Paragraph 3, above,
7 constitute cause for denial of his application for a real estate license under Sections 10177(b)
8 (Further Grounds for Disciplinary Action-Conviction of Crime) and 480(a) (Conviction of
9 Crime) of the Code.

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

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15 
16 E. J. HABERER, II
17 Deputy Real Estate Commissioner

18 Dated at Oakland, California,
19 this 5 day of August, 2011.
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