

FILED
JAN 13 2012

DEPARTMENT OF REAL ESTATE
By R. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	NO. H-11194 SF
LINDA DALE MILLER,)	
)	OAH NO. 2011090268
Respondent.)	
_____)	

DECISION

The Proposed Decision dated December 13, 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.

The Decision suspends or revokes the real estate license and/or license rights on grounds of a conviction of a crime.

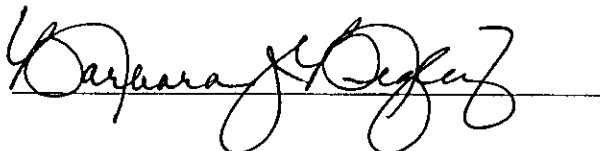
The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

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

~~FEB - 3 2012~~

IT IS SO ORDERED 1/13/12

BARBARA J. BIGBY
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LINDA DALE MILLER,

Respondent.

Case No. H-11194 SF

OAH No. 2011090268

PROPOSED DECISION

Administrative Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on November 10, 2011.

Real Estate Counsel Richard Uno represented complainant E.J. Haberer, II, a Deputy Real Estate Commissioner.

Respondent Linda Dale Miller appeared and represented herself.

The matter was submitted for decision on November 10, 2011.

FACTUAL FINDINGS

1. Linda Dale Miller (respondent) is licensed and/or has license rights under the Real Estate Law (Bus. & Prof. Code, div. 4, pt. 1) as a real estate salesperson. The license is current and will expire on February 17, 2013, unless renewed.

2. On March 15, 2011, respondent was convicted in the Superior Court of the State of California, County of Contra Costa, on her plea of no contest, of a misdemeanor violation of Penal Code section 503 (embezzlement), a crime that is substantially related to the qualifications, functions or duties of a real estate licensee.

Imposition of sentence was suspended, and respondent was placed on three years of court probation on conditions that included serving 60 days in jail (respondent was permitted to wear an ankle bracelet for two months), payment of \$2,400 in restitution, and payment of \$170 in fines. Respondent was also ordered to stay away from the victim. Respondent represents she has paid half the required restitution (the balance is due in March 2012), and that she is otherwise in compliance with the terms of her probation.

The facts underlying the conviction are that on or about March 2010 through April 2010, while employed as a clerk, respondent took property belonging to her employer. Respondent was accused of stealing jewelry and watches from her employer.

3. This is respondent's only conviction.

4. Respondent disputes the facts underlying her conviction.¹ According to respondent, she agreed to work for the owner of a jewelry store, a friendly acquaintance, as a favor because the owner had to undergo surgery. Respondent was to operate the store during the owner's absence. Respondent claims that as part of her employment, she was allowed to wear jewelry from the store without paying for it or documenting that she had borrowed it, and that she simply returned the jewelry later. She also claims that she was permitted to purchase items on "layaway," which was essentially an installment payment plan. Respondent was to work off the value of the items she purchased through her employment at the store. Respondent was paid \$10 per hour, which she could elect to apply to the purchase of jewelry.

Among respondent's duties while operating the jewelry store was the opening and closing of the safe. Respondent testified that she left the safe open many times when she left for lunch. She speculates that the jewelry and watches she was accused of stealing may have been taken by another employee, the jewelry repair man.

5. During her testimony respondent admitted that she was wearing a watch that the jewelry store owner reported as missing when she was questioned by police. Respondent also admitted that she lied to police and told them she had bought the watch at K-Mart. She claims she did so because she was afraid they would immediately take her to jail if she told them the watch was from the jewelry store. A ceramic bracelet from the jewelry store was also found in respondent's possession.

During questioning, respondent volunteered to permit the police to search her safe deposit box at her bank, which they did. None of the items listed as stolen were found in the safe deposit box. There is a dispute about a pair of diamond earrings worth several thousand dollars. Respondent claims the earrings, which respondent gave to a third party to sell, were a gift from her deceased husband. The jewelry store owner identified the earrings to the police as an item missing from her store.

6. Respondent testified that she consulted an attorney after she was questioned by the police, and that he told her any conviction would only be a misdemeanor and would not

¹ In a license discipline proceeding, the licensee may present evidence of extenuating circumstances by way of mitigation or explanation. But a licensee may not collaterally attack her conviction. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

cause her to lose her real estate license. Respondent states she decided not to contest the charges because Clayton, where she lives and works, is a small community and she "wanted to keep her reputation intact." Respondent did not want to be in a position for anyone to think she was a thief because she felt this would ruin her career. Respondent now states she wishes she had fought the charges in criminal court.

7. Respondent's testimony was not entirely credible. It was not believable that a jewelry store owner would permit an hourly employee to wear jewelry from the store without paying for it or requiring any type documentation. And respondent's explanation regarding why she decided to plead guilty was rather disjointed and at times difficult to follow. The fact respondent lied to police when questioned also casts doubt on her credibility. And even though respondent asserts she is innocent, she continues to actively seek to keep her conviction secret. Respondent testified she has only told a few family members and close friends, and that she elected not to get letters of support for her hearing because then everyone would find out about her conviction. All of these factors reflect negatively on respondent's credibility.

8. Two individuals testified on respondent's behalf at hearing. Respondent's adult daughter Brandee testified she does not believe her mother stole the jewelry or watches. She stated that she has seen the jewelry store owner permit respondent to wear jewelry out of the store on many occasions without paying for it. Brandee believes the jewelry store owner is a "shyster" and that she reported the jewelry and watches missing for the insurance money.

Julie Rogers, respondent's friend and current broker, testified that she has known respondent approximately 15 years. She does not believe respondent stole from the jewelry store owner. Rogers has always found respondent to be honest and trustworthy. During the one and one-half years respondent has worked for her, Rogers has observed that respondent is very conscientious, her files are "the cleanest in the office" and she is willing to ask questions. Rogers has never received any complaints about respondent. Rogers is willing to have respondent continue to work for her if respondent is allowed to retain her license.

9. Respondent is 60 years old. She is a retired nurse who worked at Kaiser for 33 years. Respondent retired from nursing in 2005, and obtained her real estate salesperson license that same year. Respondent is a widow. Respondent's grandchildren and adult daughter, who has health issues, currently live with her. Respondent fears they could all "end up on the street" if she loses her real estate license.

10. Respondent is very involved in her community. She is active in the Clayton Business and Community Association and her church, and she also volunteers at her grandson's school.

11. This is respondent's first disciplinary action.

LEGAL CONCLUSIONS

1. Cause for suspension or revocation of respondent's license exists pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), in that respondent has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate salesperson. Respondent's conviction for embezzlement (set forth in Factual Finding 2) is substantially related to the qualifications, functions, or duties of a real estate licensee because it involved the doing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

2. California Code of Regulations, title 10, section 2912, sets forth criteria to be used in evaluating the rehabilitation of a licensee who has committed a criminal offense. In that her offense is so recent, respondent meets few of the relevant rehabilitation criteria other than community involvement, and stability of family life and fulfillment of parental and familial responsibilities.


One of the most important criteria of rehabilitation is a change of attitude from that which existed at the time of the offense. Respondent has not presented any evidence to show a change in her attitude or any insight into the failings on her part. Instead she denies she committed the offense.

The purpose of this proceeding is not to further punish respondent but to protect the public. (*Norman v. Department of Real Estate* (1979) 93 Cal.App.3d 768, 778 (quoting *Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540).) The legislature intends that real estate licensees be persons of honesty and integrity and worthy of the fiduciary obligations they bear. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) Respondent's conduct in this case, coupled with the absence of any significant evidence of rehabilitation, makes license revocation the only discipline that is consistent with the protection of the public.

ORDER

All licenses and licensing rights of respondent Linda Dale Miller are revoked.

DATED: December 13, 2011


CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

FILED

August 11, 2011

ANNETTE E. FERRANTE, Counsel (SBN 258842)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

DEPARTMENT OF REAL ESTATE

Telephone: (916) 227-0789
-or- (916) 227-0788 (Direct)
Fax: (916) 227-9458

By 

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	H-11194 SF
LINDA DALE MILLER,)	
)	<u>ACCUSATION</u>
Respondent.)	

The Complainant, E. J. HABERER, II, in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against LINDA DALE MILLER, also known as "Linda Dale Caldwell" (hereinafter "Respondent"), is informed and alleges as follows:

1

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


///

///

1
2 On or about March 15, 2011, in the Superior Court of the State of California,
3 County of Contra Costa, in Case No. 148825-3, Respondent was convicted of violating Section
4 503 of the California Penal Code (Embezzlement), a misdemeanor and a crime which bears a
5 substantial relationship under Section 2910, Title 10, of the California Code of Regulations,
6 to the qualifications, functions, or duties of a real estate licensee.

8
9 The facts alleged in Paragraph 2, above, constitute cause under Sections 490
10 (Conviction of Crime) and 10177(b) (Conviction of Crime Substantially Related to
11 Qualifications, Functions or Duties of Real Estate Licensee) of the Code for suspension or
12 revocation of all licenses and license rights of Respondent under the Real Estate Law.

13 WHEREFORE, Complainant prays that a hearing be conducted on the
14 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
15 disciplinary action against all licenses and license rights of Respondent under the Real Estate
16 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
17 relief as may be proper under the provisions of law.
18
19
20
21


E. J. HABERER, II
Deputy Real Estate Commissioner

24 Dated at Oakland, California,
25 this 5 day of August, 2011.
26
27