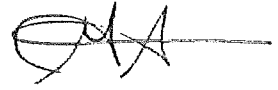


FILED

June 12, 2014

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of	)	Cal BRE No. H-11540 SF
	)	
MARIE CATHERINE TARA,	)	OAH No. 2013070205
	)	
Respondent.	)	

DECISION

The Proposed Decision dated May 12, 2014, 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. A 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 a petition for removal of restrictions is filed, 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 JUL 03 2014.

IT IS SO ORDERED

6/2/2014

REAL ESTATE COMMISSIONER

  
Wayne S. Bell

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

MARIE CATHERINE TARA,

Respondent.

Case No. H-11540 SF

OAH No. 2013070205

**PROPOSED DECISION**

Administrative Law Judge Kirk E. Miller, Office of Administrative Hearings, State of California, heard this matter on November 25, 2013, and May 1, 2014, in Oakland, California.

Stephanie Sese, Counsel, Bureau of Real Estate, represented Complainant Robin S. Tanner, Deputy Real Estate Commissioner.

Frank M. Buda, Attorney at Law, represented Respondent Marie Catherine Tara, who was present.

The matter was submitted on May 1, 2014.

**FACTUAL FINDINGS**

1. Complainant Robin S. Tanner filed the Statement of Issues in her official capacity as a deputy real estate commissioner for the Bureau of Real Estate, State of California (Bureau).
2. By application signed October 29, 2012, Marie Catherine Tara (Respondent) submitted an application to the Bureau for a real estate salesperson license. The Bureau denied Respondent's application based upon her criminal record and this hearing followed.
3. In the application, Respondent disclosed that she had a criminal record. She attached to the application form a description of her conviction history and related information.

### *Criminal Convictions*

4. On July 16, 2003, in the Superior Court of California, County of Santa Clara, by her plea of guilty, Respondent was convicted of violating Penal Code section 182, subdivision (A)(1) (conspiracy to commit crime). Imposition of sentence was suspended, and Respondent was sentenced to time served, placed on formal probation for three years, and required to pay various fees.

The facts and circumstances underlying the conviction are that Respondent provided a ride to three other individuals from Sacramento to Campbell, where the crime occurred. She went to the victim's apartment to purchase marijuana, and when she returned to the car, accompanied by the victim, he was forced into the car by the others, held at gunpoint and his apartment was ransacked and burglarized.

5. On June 22, 2007, in the Superior Court of California, County of Alameda, by her plea of no contest, Respondent was convicted of a violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08 percent), a misdemeanor. Imposition of sentence was suspended, and Respondent was placed on three years of probation, ordered to serve two days in the county jail, to attend a drinking driver course, and to pay various fines and fees.

6. On December 29, 2009, in the Superior Court of California, County of Alameda, by her plea no contest, Respondent was convicted of a violation of Penal Code section 69 (resisting or deterring an officer), a felony. Imposition of sentence was suspended, and Respondent was placed on five years of supervised probation, credited with time served of 81 days, ordered to attend an anger management class and to pay various fines and fees.

The facts and circumstances underlying the conviction are that Respondent uttered threatening words to the victim in a pending criminal case.

### *Respondent's Evidence*

#### CRIMINAL CONVICTIONS

7. Respondent explained and took responsibility for the conduct that led to each of her convictions. Her testimony was direct, complete and credible.

8. At the time of Respondent's conviction for conspiracy in 2003, she was 20 years of age. She had completed three years of college, and was living and supporting herself in Sacramento, when a friend introduced her to three men who were in need of a temporary place to stay and offered to pay her while staying at her apartment. After about three weeks, they apparently arranged to move to San Jose, packed their belongings in her car, and she drove them to the Bay Area. On the way, she stopped at the home of the mutual acquaintance. She left them in the car and went up to the victim's apartment where she

purchased some marijuana from him, and when he walked her back to the car he was assaulted by the others. They forced both him and her into the car creating a dangerous and frightening situation.

9. Respondent did not plan the assault, but also readily acknowledged that she did not turn herself in to the police until she learned that she was a suspect in the crime. Respondent no longer associates with any of the individuals who were involved, deeply regrets that she permitted herself to do so at the time, and now states this mistake "ruined [her] life." She testified that if she had been more prudent about the company she kept during those years, she would have finished college and would not be facing the ongoing consequences of this conviction.

Respondent completed probation and paid her fines in 2006. In 2011, the conviction was expunged pursuant to Penal Code section 1203.4.

10. Respondent's 2007 conviction for driving with a blood alcohol content exceeding the legal limit occurred on an evening when she went out with girlfriends. Although one of her companions had agreed to serve as the designated driver, that woman became intoxicated. Respondent thought she could drive safely, and instead of calling a taxi, tried to drive home. She too, however, was under the influence of alcohol and after swerving, was pulled over by the police. Her actual blood alcohol level was .10 percent. Respondent no longer drinks and drives, and uses alcohol only occasionally each month. She has had no subsequent convictions associated with the use of drugs or alcohol.

11. Respondent testified in some detail regarding the context in which her conviction for interfering with an officer occurred. Respondent had a former boyfriend who had assaulted the victim, causing him injury. The boyfriend's mother was an immigrant from Afghanistan, she could not drive, and she wanted to apologize to the victim's mother for her son's conduct. She requested Respondent to give her a ride to the courthouse in connection with a hearing date, where she anticipated being able to speak with the victim's mother.

At some point Respondent and the victim were in close proximity and able to speak with one another. When Respondent asked the victim how he was doing, he replied "shit I'm good." Respondent felt his response was arrogant and obnoxious, and replied without thinking "not for long." The comment was overheard by a deputy district attorney and the prosecution for her comment followed.

Respondent credibly explained that she spoke spontaneously, that she did not intend a threat, and that she had no way to enforce a threat. She was no longer involved in any way with her former boyfriend, as he had also physically abused her. Nonetheless, Respondent acknowledges her responsibility for the conduct and is remorseful that it occurred.

Respondent completed a 26-week anger management program and successfully completed probation. The conviction was reduced from a felony to a misdemeanor in October 2012, and pursuant to Penal Code section 1204.3, was expunged in June 2013.

12. Respondent expressed deep regret for the conduct and poor judgment that led to her convictions. She showed self-insight and objectivity when she testified that "one is judged by the people around you" and stated "I will not allow [criminal elements] in my life."

#### RESPONDENT'S UPBRINGING

13.

14. In 1998, when Respondent was 17 years old, she moved from Arizona to San Jose, to live with her aunt, who now lives in Indiana, but she came to testify at the hearing, and she submitted a lengthy letter of support detailing Respondent's life prior to age 17 and her situation as a teenager. writes:

Nearly 11 years have gone by since the offense of 2002, and respondent is now a drastically different person. She takes responsibility for mistakes and is careful to associate only with persons of professional quality. She works hard, often tackling two jobs at a time and working seven days a week. She has been diligent and steadfast in pursuing her real estate license, even knowing the obstacles she has to overcome. She shows maturity and common sense and is immeasurably more

self-confident then the young woman who arrived at my doorstep in 1998.

Many times over the years she has expressed to me not only deep remorse for her actions, but gratitude at having me stand by her. I believe [Respondent] is truly sorry for the mistake she made and that she deserves to obtain a real estate license. She's not the same person she was in 2002; the person she is now would never make those same choices.

15. Numerous similarly supportive letters were received from friends and other extended family members, all of whom were familiar with Respondent's convictions and which confirmed Ownbey's observations, commenting on Respondent's regret about the past, her determination about the future, and her obvious emotional growth and positive change.

16. Respondent did not contend that having lacked a traditional home life, or the absence of the love, support and guidance from which children generally benefit, was an excuse for her conduct. In fact, her positive, professional demeanor belies the stark limitations of her formative years. Nonetheless, the challenges that Respondent faced throughout her youth and into her young adult years were inevitably a factor in her poor judgments and associations, and these were a factor that resulted in her convictions.

#### RESPONDENT'S REAL ESTATE INDUSTRY EXPERIENCE

17. Respondent was first exposed to the real estate industry at age 18 as a telemarketer; and since 2003 she has primarily worked as a loan processor and transaction coordinator.<sup>1</sup> Although not required to do so, on May 3, 2013, Respondent studied to become, and received a certificate from the California Association of Realtors as, a "certified transaction coordinator."<sup>2</sup> In this capacity, Respondent creates and manages the timeline for sales to close, keeps track of disclosures, orders reports and inspections, proofreads documents, and performs other clerical work to facilitate property sales. In May 2012, Respondent also received a course completion certificate from Chamberlain Real Estate

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<sup>1</sup> During the real estate downturn in 2007 she did not work in real estate. In 2008 Respondent was granted a salesperson license to sell cars by the California Bureau of Motor Vehicles.

<sup>2</sup> Her certificate work required completion of the following classes: "Fundamentals of Transaction Coordination"; "Transaction Talk Workshop for Realtors/Lenders/ Escrow Officers"; "Real Estate Do's and Don'ts for Non-licensees"; and, "Disclosures -What You Need To Know -- Part One and Part Two."

School, having completed 135 hours of real estate course work in anticipation of taking the real estate salesperson license examination.

18. Respondent is presently working as a transaction coordinator at Bay Alliance Funding, Inc. Between July 2012 and March 2013, she also worked a second job with another real estate brokerage, Keller Williams, as the weekend receptionist. In addition, Respondent is on the Board of Directors, and chairs the membership committee of Value Real Estate Network, a volunteer organization that supports real estate professionals in the Pleasanton/Dublin area, and she was invited to serve in a leadership position at Bay East, the local multiple listing service. She is responsible for planning the organization's Friday marketing meeting which provides information on various topics for real estate agents and brokers, and for coordinating the agent open house events in Newark, Fremont and Union City. Respondent has enjoyed and benefited from the opportunity to meet successful relators in these organizations.

19. Respondent was well regarded during the time she worked at Keller Williams. Rick Geha, a sales agent there, provided a letter stating:

All of my interactions with [Respondent] were pleasant and forthcoming. She was very alert, aware, and knew the needs and wants of the agents. She was a networker supreme, and knew how to get people to open up and talk about what they were looking for. She was prompt, detailed oriented, and was always honest about her schedule and her comings and goings. I was in the office often on weekends, when respondent was most often there. She always checked in with me before and after her appointments and breaks, and always wanted to make sure that I was, along with other agents in the office, getting what I needed, and being supported.

Lastly, I want to say that respondent has remained very "learning based." She is willing to attend classes, and listen to those who have had more success, so that she can learn from them and incorporate their habits into her life and business. That is the most impressive quality. Someone who wants to be on the road to personal and professional development ALL of the time.

20. Respondent is similarly well regarded at Alliance Bay Funding, where she continues to work. Valeen Oris, a realtor in the office who is aware of her convictions, writes:

It was April of 2011 when I first noticed [Respondent] during our Thursday sales meeting. . . . Respondent caught my attention when she began answering technical real estate questions with great detail and accuracy. She was definitely

someone in the company I wanted to associate with. She became my transaction coordinator, [and] we closed several transactions together. . . . I believed in [Respondent] and saw a future working with her so I invested in [Respondent] by paying for a transaction coordinator class that we attended together. . . . I have only seen [Respondent] as a very ethical and professional business woman, I am proud to call her my friend. She is a straightforward truthful person.

21. Dawar Lodin is a broker and owns Alliance Bay Funding and Realty, Inc. He has known Respondent for eight years and has discussed her convictions with her. Lodin was unable to testify at the hearing due to a family medical emergency, but provided a detailed character letter, a portion of which is as follows:

I am writing this letter to recommend that you grant a real estate license to [Respondent], who is currently working as a full-time transaction coordinator. I would hire [Respondent] as a real estate salesperson for Alliance Funding and Realty if she were granted her license, and as her broker I would readily agree to closely supervise her licensed activities.

I cannot count the numerous times [Respondent] has gone out of her way beyond the scope of her job definition to help the agents in our office. She does not receive an hourly wage, but she helps her coworkers from the goodness of her heart. . . . Not only does she help around the office, but she also brings information to the agents regarding market updates, changes in real estate laws, or anything of value that she learns to better everyone around her. She attends local marketing meetings on a weekly basis and shares what she learns in those meetings with her coworkers, so everyone may benefit from her knowledge. . . . All of the escrow officers, sales representatives, NHD vendors, and [Respondent's] various other coworkers have nothing but great things to say about her attitude and professionalism.

In spite of her troubled past, I see a bright, successful future for respondent due to her hard work, dedication and continuing efforts to improve her life on a daily basis.

#### OTHER COMMUNITY ACTIVITIES

22. In addition to her volunteer work on behalf of real estate professional organizations, Respondent has also been active with Young Professionals Network, which provides community services to the disadvantaged. Through this organization she has been



involved with food drives for Kids Against Hunger and other activities. At Christmas, she also volunteered for the Salvation Army.

## LEGAL CONCLUSIONS

1. The burden of proof in a statement of issues case is a preponderance of the evidence.<sup>3</sup>

2. Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), together provide that a real estate salesperson's license may be denied if the applicant has been convicted of a felony or a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

In California Code of Regulations, title 10, section 2910 the Bureau has established criteria to be considered when evaluating whether a crime or act is substantially related to the licensed activity of real estate sales. Subdivision (a)(8) of section 2910 is "doing of any unlawful act with the intent or threat of doing substantial injury to the person or property of another." Subdivision (a)(11) of section 2910 is "Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use of consumption of alcohol or drugs." Subdivision (b) of section 2910 provides "The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, function or duties of a licensee of the Bureau."

Respondent's 2003, 2007 and 2009 convictions are substantially related the licensed activity of real estate sales. Cause exists to deny Respondent's application by reason of the convictions set forth in Findings 4, 5 and 6.

3. As legal cause for denial exists, the next question to be addressed is whether Respondent has demonstrated sufficient rehabilitation to warrant licensure. The Bureau's regulations, found at California Code of Regulations, title 10, section 2911 contain criteria to assist in the difficult assessment of rehabilitation and consequent risk to the public safety presented by an applicant who has been convicted of a crime. In a case where the convictions are for serious offenses, compliance with all of the most relevant criteria is required. These are: (1) whether more than two years have passed since the last conviction; (subd. (a)); (2) expungment of the convictions (subd. (c)); payment of the fine or other monetary penalty imposed (subd. (g)); (4) demonstrated "stability of family life" subsequent to the convictions (h)); (5) completion of formal education or vocational training courses for economic self-improvement (subd. (h)); (6) conscientious involvement in community social

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<sup>3</sup> Evidence Code section 115 provides in relevant part "Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." In matters involving real estate licenses, clear and convincing evidence is only required in cases involving an accusation.

benefit programs (subd. (l); (7) new social relationships from those that existed at the time of the offense at issue (subd. (m)); and, (7) change in attitude from that which existed at the time of the conduct in question (subd. (n)). Change in attitude can be demonstrated by the applicant's testimony, by evidence from family, friends or other persons familiar with the applicant's conduct, and by the absence of subsequent convictions "reflective of an inability to conform to societal rules."

4. At the hearing, respondent credibly addressed each of these criteria. It has been nearly five years since Respondent's most recent conviction, and both of her more serious convictions have been expunged. Respondent successfully completed probation for each offense and paid in full the fines associated with them. While as a child she was never given the benefits of a stable home life, she now enjoys the support of and benefits from relationships with her extended family. Respondent has shown an unusual passion for real estate, taking it upon herself to become a certified transaction coordinator and taking the courses needed for a salesperson license, as well as both attending and arranging for speakers at professional development meetings. These gatherings benefit not only Respondent, but realtors throughout the community. Respondent has worked for 10 years in an unlicensed capacity, but with access to confidential client information, and has done so with discretion and without a breach of confidence. Her volunteer work for both the real estate profession and for disadvantaged populations has been substantial. Respondent has completely abandoned the social relationships that were in place at the time of her convictions, and replaced them with other young professionals and a far healthier environment. Taken together, Respondent has convincingly demonstrated a changed attitude and she has taken complete responsibility for her prior misconduct.

5. Complainant argues that Respondent has failed to demonstrate sufficient rehabilitation to warrant licensure, citing *In re Menna* (1995) 11 Cal.4th 975. Menna was an attorney who had been disbarred in his home state of New Jersey, and following a prison term, came to California and sought admission to the California Bar. While practicing law in New Jersey, he diverted hundreds of thousands of dollars from client trust accounts to his own use in order to pay gambling debts. He also manufactured illegal drugs. After being released from prison Menna overcame his gambling addiction and sought membership in the California Bar. In denying his application, the Supreme Court expressly distinguished the burden of proof of a disbarred lawyer seeking "reinstatement" from a first time applicant. The court said: "We have held the burden of proof of good moral character is substantially more rigorous for an attorney seeking reinstatement than for a first time applicant." In cases of reinstatement, the court found an applicant must demonstrate "the most clear and convincing evidence that efforts made toward rehabilitation have been successful over time to demonstrate genuine reform." In denying reinstatement, the court pointed to Menna's failure to make any sustained or significant efforts toward making restitution to his victims or paying back taxes, which jointly amounted to hundreds of thousands of dollars.

6. The similarities between the situation in *Menna* and the facts here are at best slight. Menna, while holding a law license, systematically and for a period of years, enriched himself while violating the trust and duty he owed to his clients. Respondent's offenses

resulted in no personal benefit, none of them involved anything like a fiduciary relationship, and they did not occur while she was licensed. Menna had a gambling addiction, which presents a risk of re-occurrence, while the evidence was that Respondent is unencumbered by addiction of any kind. Menna showed no interest in making restitution, while Respondent has paid her fines and has given back by providing community and professional service, and shown a commitment to educating and improving herself. Menna committed crimes after completing college and law school and passing the bar, while Respondent committed offenses after graduating from her life in shelters, orphanages, and group homes. Menna was seeking reinstatement after losing his license for criminal conduct, while Respondent is a first time applicant.

7. Respondent's convictions are nonetheless serious and require evidence of rehabilitation before a license can be granted. Her conduct as a very young woman can fairly be characterized as reckless, and it was an ongoing process before her emotional age caught up with her chronological age. But that has now occurred. Respondent has since flourished in the company of her present colleagues, and no evidence even implied she is in danger of reoffending. Respondent provided compelling evidence that following her 2009 conviction, she walked away from her past and embraced a new life of learning and serving, with the real estate industry at the center of the change. While she has sought out community service opportunities, more important is the direct effort she has put into becoming a real estate professional, both by taking optional classes and by working closely with agents and brokers. And the licensed professionals, at two separate firms, are highly supportive of her application based upon their personal experiences working with her. Their uniform message is that Respondent is honest, focused and knowledgeable, and that she has been and can be trusted with confidential customer information. Respondent's own testimony was persuasive as well. Other than the fact of the now expunged convictions, all of the evidence was that Respondent is unusually committed and well prepared to handle the responsibilities of a real estate salesperson. On this record, the public will be adequately protected if Respondent receives a restricted salesperson's license.

## ORDER

Respondent Marie Catherine Tera's application for a real estate salesperson's license is denied; however, a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code 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) The conviction of Respondent (including a plea of no low contendere) if 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.

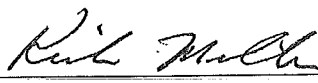
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

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 Bureau 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: May 12, 2014

  
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KIRK E. MILLER  
Administrative Law Judge  
Office of Administrative Hearings