

FILED

MAY 24 2017

BUREAU OF REAL ESTATE

By M. Roberts

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-11902 SF
)	
MEGHAN KATHRYN BASSO,)	OAH No. 2015120259.1
)	
Respondent.)	

DECISION

The Proposed Decision dated April 11, 2017, 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 one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 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 JUN 14 2017.

IT IS SO ORDERED 5/23/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MEGHAN KATHRYN BASSO,

Respondent.

Case No. H-11902 SF

OAH No. 2015120259.1

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on March 20, 2017, in Oakland, California.

Adriana Z. Badilas, Counsel, represented complainant Robin S. Tanner, Supervising Special Investigator for the Bureau of Real Estate, State of California.

Respondent Meghan Kathryn Basso was present and was represented by Sean B. Absher, Attorney at Law, Stradling, Yocca, Carlson & Rauth.

The record was held open until March 27, 2017, for the parties to submit closing briefs. Complainant's brief was received and marked for identification as Exhibit 10. Respondent's brief was received and marked for identification as Exhibit D.

The record closed and the matter was submitted for decision on March 27, 2017.

FACTUAL FINDINGS

1. Robin S. Tanner made the Accusation in her official capacity as a Supervising Special Investigator for the Bureau of Real Estate (Bureau) of the State of California.
2. Respondent Meghan Kathryn Basso was initially licensed and had licensing rights under the Real Estate Law¹ as a real estate salesperson on June 9, 2010. Respondent's salesperson license will expire on July 8, 2018, unless renewed.

¹ The Real Estate Law is found at Business and Professions Code section 10000 et seq.

Criminal conviction

3. On March 19, 2013, respondent was convicted, on her plea of guilty, of violating 18 U.S.C. § 1349 (conspiracy to commit bank fraud and wire fraud), a felony and a crime that is substantially related to the qualifications, functions and duties of a real estate licensee.²

Respondent was sentenced to credit for time served³ and was ordered to pay restitution in the amount of \$442,600,⁴ as well as a mandatory special assessment in the amount of \$100. Many letters of support were submitted to the United States Attorney's Office prior to respondent's plea. The letters uniformly praised respondent for her determination and hard work in overcoming her drug addiction and building a successful life, personally and professionally.

4. The facts and circumstances surrounding respondent's offense are that respondent conspired to defraud a financial institution insured by the Federal Deposit Insurance Corporation and to execute a scheme to defraud by transmitting wire communications in interstate commerce. This conduct occurred between 2006 and 2007, before respondent became licensed as a real estate salesperson.

Failure to report felony conviction

5. Respondent failed to notify the Bureau within 30 days of her felony conviction, as is required by Business and Professions Code section 10186.2, subdivisions (a)(1)(B) and (a)(2). Respondent did, however, disclose her March 2013 conviction to the Bureau when she renewed her salesperson license in June 2014.

Respondent's evidence

CIRCUMSTANCES SURROUNDING RESPONDENT'S DRUG ADDICTION AND EVENTUAL RECOVERY

6. Respondent was raised in a loving family in Moraga. Her father was a licensed real estate broker and her brother works as a real estate salesperson. Respondent's idyllic childhood abruptly came to an end when she was molested by a middle school biology teacher. This incident was the precursor to respondent's drug and alcohol use. Several years later, as a sophomore in high school, she sustained a broken

² California Code of Regulations, title 10, section 2910, subdivision (a).

³ Respondent was given custodial credit for the time that it took to fingerprint her.

⁴ Respondent was held jointly and severally liable for this amount with three other defendants.

neck when she was a passenger in a car involved in a drunk driving accident. Finally, as a high school senior, respondent was gang raped.

7. Respondent's drug and alcohol abuse intensified after high school. She became addicted to methamphetamines, which hastened her downward spiral. Respondent became homeless for about 18 months; she experienced psychological problems; she tried, without success to stop using drugs, and ultimately lost her desire to live. After a number of tries at sobriety, respondent succeeded on March 14, 2006, after completing a program at Marin Services for Women. Shortly after she stopped using drugs, she started working at a real estate investment company, where she committed her criminal offense.

FACTS AND CIRCUMSTANCES SURROUNDING CONVICTION

8. In respondent's plea agreement, dated March 19, 2013, she admitted to the following facts: Between June 2006 and September 2007, she was employed by Onyx Capital Property and Investment (OCPI), where she worked under the supervision of Jake Moynihan. Respondent's job duties included preparing and submitting mortgage applications to banks. Respondent provided false information in most of the mortgage applications handled by OCPI. Respondent personally inputted false information in the applications and created false documentation in support of the applications, and she used faxes and electronic mail to carry out the scheme.

9. Respondent realizes that she convinced herself that her conduct at OCPI, described above, was acceptable. Only after disclosing her actions to her brother did she come to terms with the fact that her actions were illegal. Respondent was 23 years old at the time she began working for Moynihan; she was working under his supervision and direction; and was struggling to maintain her recent sobriety. Respondent describes herself as having had the emotional maturity of a 17-year-old. She was also under the care of psychiatrists, therapists and substance abuse counselors and was diagnosed with alcohol and substance abuse, eating and anxiety disorders and post-traumatic stress syndrome.

10. Respondent believes that her lack of insight into her criminal behavior stemmed from immaturity and a desire, as a recovering addict, to maintain her employment, almost at any cost. Respondent also felt intimidated by Moynihan, who sexually harassed her by sending her obscene email messages. Respondent disclosed to Moynihan that she was a newly recovering addict and was desperate for work, and she believes that he exploited her vulnerability.

REHABILITATION EVIDENCE

11. Respondent stopped working at OCPI in September 2007, because she no longer wanted to be involved in unlawful activities, and because the work environment was unhealthy. In December 2007, respondent moved to Albuquerque to live with her brother and make a fresh start. She attended school there and proved to herself that she

was capable of succeeding. In 2008 she returned to the Bay Area and enrolled in Diablo Valley College. She performed so well that she was admitted to the University of California, at Berkeley (U.C. Berkeley), with a full scholarship. Respondent graduated with a degree in political science from U.C. Berkeley in 2010.

12. In October 2009 respondent began working at Newmark Cornish and Carey (Newmark) as a market researcher. She performed so well that she was promoted to a retail specialist. In June 2010, she received her salesperson license. Respondent continues to work at Newmark, in the capacity of a retail commercial leasing agent. She is currently on maternity leave and plans to return to work in April 2017. Respondent has received unconditional praise from her supervisor of seven years, Thomas J. Fehr. Fehr is a Regional Managing Director at Newmark. He describes respondent as ethical, well-liked by her colleagues, and honest. Respondent was completely candid with Fehr regarding her criminal case. Fehr opines that respondent will have a "bright future" and will continue to "grow and excel" in her field. Respondent's clients also describe respondent as a talented, thoughtful, tenacious, and responsible professional.

13. In 2009 respondent married. Respondent has two children, one born in 2012 and another born in 2016. She sees her parents regularly and has a close and loving relationship with them. Respondent is proud of the person she is today: she is a devoted mother and wife; she is involved in community groups, such as the Junior League of Oakland and Lamorinda Moms; she donates blood; and most importantly, she greatly values honesty and integrity. Respondent loves her job for many professional reasons: she is respected and admired and enjoys working in the field of retail leasing. As a mother, respondent appreciates the flexibility that her work affords her. Respondent describes her role as a mother as the "most important job in this world."

14. Respondent is extremely remorseful for her ethical transgressions. She is grateful, however, that her experience fueled her desire to live a law-abiding and productive life. Respondent's mother testified to the great strides that respondent has made in her life following her recovery from drug and alcohol abuse. She is extremely proud of her daughter.

15. Respondent's testimony was forthright and credible in all respects.

16. Based upon the income and expense information that respondent reported to the Financial Litigation Unit of the U.S. Department of Justice, respondent is obliged to pay restitution in the amount of \$150 per month. Respondent began paying off restitution on March 5, 2017.

FAILURE TO REPORT FELONY CONVICTION

17. Respondent failed to timely notify the Bureau of her conviction because she was not aware of her statutory duty to do so. Her violation of her statutory obligation did

not stem from an intention to deceive the Bureau. Indeed, respondent disclosed the conviction on her June 2014 license renewal application.

Cost recovery

18. The Bureau reasonably incurred a total of \$3,681.80 in its investigation and enforcement of this matter. Of this amount, \$1,750.50 was incurred in investigation costs and \$1,931.30 was incurred in attorney costs. In the absence of evidence to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490, subdivision (a), authorizes the suspension or revocation of a license if the licensee 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 suspension or revocation of a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions and duties of a licensee.

California Code of Regulations, title 10, section 2910, sets forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. Respondent's offense, insofar as it involved conspiracy to commit bank and wire fraud, is a crime that is substantially related to the qualifications, functions or duties of a licensee. (Cal. Code Regs., tit. 10, § 2910, subs. (a)(1), (a)(2), (a)(4), & (a)(8).) Accordingly, cause exists to discipline respondent's real estate salesperson license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

2. Business and Professions Code section 10177, subdivision (j), authorizes the suspension or revocation of a license if the licensee has engaged in conduct that amounts to fraud or dishonest dealing. By reason of the matters set forth in Factual Findings 3 and 4, cause exists to discipline respondent's real estate salesperson license under this statute.

3. Complainant alleges that respondent's criminal conduct also violates Business and Professions Code section 10176, subdivision (i). This section, however, pertains to acts committed while a person is a licensee. Insofar as respondent was unlicensed at the time of her misconduct, cause for discipline does not exist under this section.

4. Pursuant to Business and Professions Code section 10186.2, subdivisions (a)(1)(B), and (a) (2), a licensee must report any felony conviction to the Bureau within 30 days. Business and Professions Code section 10177, subdivision (d), authorizes the suspension or revocation of a license if the licensee has violated a real estate law. Respondent's failure to timely report her felony conviction to the Bureau, as set forth in Factual Finding 5, constitutes cause for discipline. (Bus. & Prof. Code, § 10186.2, subd. (b))

& § 10177, subd. (d).) The fact that respondent was unaware of the reporting requirement does not excuse her violation of this statute.

Cost recovery

5. Business and Professions Code section 10106 provides that the Bureau may request that the licensee be ordered to pay a sum not exceeding the reasonable costs of investigation and enforcement upon a finding that the licensee violated the Real Estate Law. The Bureau requests reimbursement of fees and costs in the amount of \$3,681.80 in its investigation and enforcement of this matter. The Bureau's fees and costs are reasonable. (Factual Finding 18.)

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. These guidelines have been considered. Respondent has not established a basis to reduce or eliminate the costs in this matter.

Disciplinary determination

6. California Code of Regulations, title 10, section 2912, sets forth criteria for determining the rehabilitation of a licensee in a disciplinary proceeding. These criteria have been considered in arriving at the appropriate discipline. At the outset, it is noted that public safety is the Bureau's paramount concern.

As explained below, in light of respondent's substantial rehabilitation, revocation of respondent's license is unnecessary to protect the public. Instead, it is determined that public safety will not be imperiled if respondent continues working as a real estate salesperson with a restricted license for a period of three years.

It is undisputed that respondent's offense, defrauding lenders by inputting false information in mortgage applications, is extremely serious. Respondent fully acknowledges that her fraudulent conduct reflects an extremely serious lapse of judgment. Although she was not licensed at the time, her offense strikes at the heart of the duties and obligations of a real estate salesperson. Yet, it is also true that respondent committed her offense 10 years ago, when she was relatively young, early in her recovery from drug addiction, and desperate for work. While respondent's history as a victim of molestation, a drunk driver, and a sexual assault occurred many years before the commission of her offenses, these experiences presented incredibly difficult challenges for a young woman and set the stage for her drug addiction. Respondent successfully stopped using drugs 11 years ago.

The evidence at hearing amply demonstrated that through her hard work and determination, respondent has grown tremendously since the commission of her offense. She graduated from U.C. Berkeley, got married, had two children and succeeded in establishing herself as a respected licensee. In short, respondent has learned from her mistakes, and is

thoroughly committed to leading a law-abiding and productive life. Respondent has earned the praise of her supervisor, colleagues, and clients. She is an asset, not a liability, to the real estate profession. Respondent is passionate about her work in retail leasing and wants nothing more than to continue working in the field. While respondent took a longer period of time to commence payment on her restitution than might be expected, she is now paying the monthly restitution amount that has been deemed appropriate based upon her income and expenses.

In consideration of the strong showing of rehabilitation, respondent may continue practicing as a licensee with the restricted license, under the terms outlined in the following Order.

ORDER

All licenses and licensing rights of respondent Meghan Kathryn Basso under the Real Estate Law are revoked by reason of Legal Conclusions 1, 2 and 4, jointly and individually; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 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. Conviction or Plea to a Crime

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 or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. Violation of Law

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. Application for Unrestricted License

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

effective date of this Decision.

4. Notice to Employer

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. Continuing Education Requirement

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 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.

6. Professional Responsibility Condition

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.

7. Costs

Respondent shall pay to the Bureau of Real Estate costs associated with its investigation and enforcement pursuant to Business and Professions Code section 10106 in the amount of \$3,681.80. Respondent shall be permitted to pay these costs in a payment plan approved by the Bureau, with payments to be completed no later than three months prior to the end of the restriction on her license.

DATED: April 11, 2017

DocuSigned by:

Diane Schneider

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DIANE SCHNEIDER

Administrative Law Judge

Office of Administrative Hearings