

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

FILED

FEB 21 2019

In the Matter of the Application of:
ASHLEY LORRAINE MCSWEENEY,
Respondent.

) DRE No. H-12297 SF
)
) OAH No. 2018110117
)

DEPARTMENT OF REAL ESTATE
By S. Krupp

DECISION

The Proposed Decision dated January 28, 2019, 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.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department'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.

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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.

This Decision shall become effective at 12 o'clock noon on MAR 14 2019.

IT IS SO ORDERED February 20, 2019

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER



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STATE OF CALIFORNIA

In the Matter of the Application of:

ASHLEY LORRAINE MCSWEENEY,

Respondent.

Case No. H-12297 SF

OAH No. 2018110117

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter on January 10, 2019, in Oakland, California.

Kyle Jones, Counsel, represented complainant, Robin S. Tanner, a Supervising Special Investigator of the Department of Real Estate, State of California.

Respondent Ashley Lorraine McSweeney represented herself and was present throughout the administrative hearing.

The matter was submitted for decision on January 10, 2019.

FACTUAL FINDINGS

1. Robin S. Tanner made the statement of issues in her official capacity as a Supervising Special Investigator of the Department of Real Estate, State of California.
2. Ashley Lorraine McSweeney (respondent) applied to the Department of Real Estate (Department) for a real estate salesperson license on November 20, 2017.

Criminal History

3. On February 13, 2013, in the Superior Court of the State of California, County of Sonoma, respondent was convicted of two counts of violating Penal Code section 211 (robbery), felonies and crimes that bear a substantial relationship to the qualifications, functions and duties of a real estate licensee.

4. On June 9, 2011, in the Superior Court of the State of California, County of Sonoma, respondent was convicted of violating Vehicle Code section 12500, subdivision (a) (driving without a license), a misdemeanor.

5. On January 8, 2010, in the District Court of Alaska, County of Homer, respondent was convicted of violating section 28.35.030 of the Alaska Statutes (driving under the influence), a misdemeanor.

6. On April 8, 2003, in the Superior Court of the State of California, County of Sonoma, respondent was convicted of violating Penal Code section 484 (theft), a misdemeanor, and a crime that bears a substantial relationship to the qualifications, functions and duties of a real estate licensee.

7. Question 28 of respondent's application asked: "Have you ever been convicted of any violation of the law at the misdemeanor or felony level? If yes, complete item 34 with information on each conviction." Respondent answered yes, and disclosed the convictions set forth in Factual Finding 3, above. She did not disclose the convictions set forth in Findings 4, 5, and 6, above. When the Department sent respondent letter asking for the details of her convictions, she did research and sent the information requested by the Department. Respondent did not intend to make a false statement or mislead the Department.

Respondent's Evidence

8. Respondent admits to having a problem with drugs and alcohol. She presented proof of successful completion of the Treatment Accountability for Safer Communities (TASC) program on June 18, 2014. She has remained clean and sober since 2012. She spent six months in a residential rehabilitation program and lived at the facility an additional year as a night duty counselor. Respondent presented a letter dated April 15, 2018, from her case manager at the residential treatment program. She has remained friends with respondent and she strongly recommends respondent for the real estate profession.

9. Respondent has been employed in the restaurant industry. She has worked at the Piner Café in Santa Rosa since 2014. Respondent presented a letter dated June 1, 2017, from someone she met at work. They attest to respondent's changed life-style and her commitment to her community. Respondent also presented another character letter from someone who knows her through her employment. She finds respondent to be professional and considerate.

10. Respondent attended community college for a computer class. She also took real estate classes in 2017. Respondent has been working with Debra Johnson at Berkshire Hathaway. Ms. Johnson knows about her past. Respondent assisted her for nine months.

11. Respondent provided a letter for support from Phillip Billeci-Gard, Associate Director of Athletics at Dominican University of California. He is respondent's brother-in-

law and former boss. He has been working with respondent for the past five years. He finds her hard working and watched her transform herself including completing a full marathon.

12. Respondent has worked very hard to change her life. She has demonstrated that she is sufficiently rehabilitated to receive a restricted real estate salesperson license.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a)(1), authorizes the Department to deny a license to an applicant who 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 real estate licensee.

2. California Code of Regulations, title 10, section 2910, sets forth criteria for determining whether a crime is substantially related to the qualifications, functions and duties of a real estate licensee. The crimes for which respondent was convicted do involve dishonesty, except driving without a license. Therefore, cause exists to deny the application pursuant to Business and Professions Code sections 480, subdivision (a) and 10177, subsection (b).

3. It was not established that respondent violated Business and Professions Code sections 480, subdivision (d) (false statement of fact), and 10177, subdivision (a) (attempted procurement of license by misrepresentation). She did not intend to deceive the Department (Factual Finding 7.) Cause to deny the application therefore does not exist pursuant to Business and Professions Code sections 480, subdivision (d), and 10177, subdivision (a).

4. California Code of Regulations, title 10, section 2911, sets forth criteria for evaluating whether an applicant has been sufficiently rehabilitated to warrant licensure. Respondent has satisfied many of the criteria. Respondent's convictions occurred over six years ago (except for the last one in February of 2013). Respondent has successfully completed probation (§ 2911, subd. (a)(5)). Respondent has a stable family life. (§ 2911, subd. (a)(8).) Respondent pursued vocational education in 2016. (§ 2911, subd. (a)(9).) Respondent established through her testimony and the letters of family members and friends, that she has made significant changes to her attitude and behavior since the time of her misconduct. It is very unlikely that any misconduct will occur in the future.

Respondent was candid and forthcoming about her past. She did not try to conceal her 2013 conviction and sent the details on the rest once she was requested to do so.

Respondent has established through her testimony and the letters of her family and friends that she is a changed individual. Respondent expressed insight during her testimony

and was very credible. Respondent has presented sufficient evidence of rehabilitation to justify the issuance of a restricted salesperson license.

ORDER

Respondent Ashley Lorraine McSweeney's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. 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 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 the 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 the restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for removal of any of the conditions, limitations or restrictions of a restricted license until three 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.
4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 137007, Sacramento, CA 95813-7007. The letter shall set forth the date

of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file a written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: January 28, 2019

DocuSigned by:

Ruth S. Astle

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RUTH S. ASTLE

Administrative Law Judge

Office of Administrative Hearings