

1 On, October 4, 2004, Respondent petitioned for the
2 removal of restrictions attaching to Respondent's real estate
3 salesperson license.

4 I have considered Respondent's petition and the
5 evidence submitted in support thereof. Respondent has
6 demonstrated to my satisfaction that Respondent meets the
7 requirements of law for the issuance to Respondent of an
8 unrestricted real estate salesperson license and that it
9 would not be against the public interest to issue said license
10 to Respondent.

11 NOW, THEREFORE, IT IS ORDERED that Respondent's
12 petition for removal of restrictions is granted and that a real
13 estate salesperson license be issued to Respondent subject to
14 the following understanding and conditions within nine (9)
15 months from the date of this Order:

16 1. Submittal of a completed application and payment
17 of the fee for a real estate salesperson license.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the)
Statement of Issues Against:) Case No. H-27876 LA
)
DIANE VIRGINIA LEE,) OAH No. L1998110224
)
Respondent)
_____)

PROPOSED DECISION

This matter came on for hearing before John F. Grannis, Administrative Law Judge Pro Tem of the office of Administrative Hearings, on January 5, 1999, at Los Angeles, California.

James R. Peel, Staff Counsel, represented complainant Thomas McCrady.

Respondent Diane Virginia Lee appeared personally and represented herself.

The parties presented oral and documentary evidence at the hearing, and submitted the matter for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. Complainant, acting in his official capacity as Deputy Real Estate Commissioner of the State of California, Department of Real Estate ("Department"), and not otherwise, filed the Statement of Issues herein on October 15, 1998.
2. On June 19, 1998, respondent filed an application with the Department for the issuance of a real estate salesperson's license, pursuant to the provisions of Business and Professions Code Section 10153.3, and subject to the conditions and requirements of Business and Professions Code Section 10153.4.
3. In response to Question Nos. 25 and 27 on her application, respondent truthfully disclosed as a prior conviction her plea of guilty to a charge of felony grand

theft in the State of Florida in 1986. The Department denied respondent's license application, and this action ensued.

4. Respondent is a former resident of Hillsborough County, Florida. Between 1978 and 1985, she was employed as the office manager and bookkeeper of the Hillsboro News Company. While employed in that position, respondent took advantage of her access to a particular cash account by stealing money from the account on a weekly basis, and covering each weekly deficit with cash receipts from the following week.

5. Respondent's theft was discovered in July 1985. She was promptly fired by her employer and arrested by the police.

6. On December 31, 1985, the local state attorney's office filed an information against respondent in Hillsborough County Circuit Court, Case No. 85-7564-E. The information charged respondent with one felony count of first degree grand theft, in violation of Florida Statutes Section 812.014(2)(a). This offense is a crime of moral turpitude, and is substantially related to the qualifications, functions and duties of a real estate salesperson.

7. On March 12, 1986, respondent entered a plea of guilty.

8. On April 23, 1986, the court accepted respondent's guilty plea.

9. In accepting respondent's guilty plea, the court did not convict her of the offense alleged in the information, although it could have done so. Instead, the court exercised its discretion under Florida Statutes Section 948.01¹ to accept her guilty plea but to withhold adjudication of her guilt. In doing so, the court made the specific findings "that you are not likely again to engage in a criminal course of conduct, and that the ends of justice and the welfare of society do not require that you be presently adjudged guilty and suffer the penalty authorized by law."

10. The court placed respondent on supervised probation for a period of 15 years, subject to terms and conditions, including her participation in mental health counseling, her completion of 1,000 hours of community service, and her payment of restitution totaling \$214,751.86, at the rate of \$5,000.00 per month.

¹ Florida Statutes Section 948.01(2) provides, in relevant part, "If it appears to the court upon a hearing of the matter that the defendant is not likely again to engage in a course of criminal conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold the adjudication of guilt ... "

11. By October 1987, respondent was no longer able to pay the restitution at the court-ordered rate. On October 22, 1987, the court modified its order to provide for a payment rate of \$300.00 per month.

12. With this modification, respondent has been able to comply with all the terms and conditions of her probation to date. She conscientiously participated in mental health counseling with two different psychologists. She performed more than the required 1,000 hours of community service. And she is current on her restitution obligation at the modified payment rate. Respondent now owes a remaining balance of \$73,107.56. Her probation is scheduled to end in April 2001.

13. Respondent admits stealing at least \$187,000.00. She has not denied responsibility for her misconduct. However, respondent testified credibly and persuasively as to certain mitigating circumstances in existence at that time. From 1977 to 1987, respondent was married to an abusive husband, Richard Luckey. Mr. Luckey rarely worked, but he spent most of the money respondent earned. Respondent was trying to raise his three children from a prior marriage, and she had difficulty making ends meet. She began stealing money from the cash account at work simply to pay the family's bills. She knew she was breaking the law, but she felt trapped in her marriage. Mr. Luckey, who knew of her theft, insisted that she continue. He threatened to report her theft to the authorities if she ever stopped.

14. Respondent divorced Mr. Luckey and declared bankruptcy before moving from Florida to California in approximately 1989. Upon arriving in California she went to work for an executive recruitment firm. She later worked for Baskin-Robbins International, in its international marketing department, from 1991 to 1996. She is now self-employed as a travel agent.

15. Respondent has a long history of involvement in charitable and civic activities. From 1983 to 1987, she participated in a program that provided horseback riding instruction to mentally retarded children. She also served a volunteer for the Junior Achievement organization in Florida, presenting seminars on sales and economics in the local public schools.

16. Respondent has continued her civic involvement here in California. She served as an Earth Day volunteer for the City of Irvine in May 1990. Later that year she worked as a volunteer for the Irvine Fine Arts Center. Respondent has worked as a fundraiser and an organizer for the March of Dimes since 1991. She became a professional ski instructor in 1992, and since 1993 she has participated in a program that provides ski instruction to retarded children. While working for Baskin-Robbins International, she served on its children's charities committee, and she helped to organize and raise funds for a number of special events for underprivileged children. In the winter of 1997-98 respondent became a Forest Service volunteer, and served in

winter sports and nature programs in the San Bernardino Mountains. And in 1998 respondent served as a fire prevention volunteer in the Angeles National Forest. She helped to restore a fire lookout station, and spent weekends during the fire season working as a fire spotter.

17. Respondent's spiritual life has undergone a significant change in recent years. She was never involved in any faith community of any kind prior to 1994. In that year respondent became a member of the Catholic faith, and she is now an active member of St. Philip's Catholic Church, in Pasadena, California. She attends mass every week, and she is active in an evangelism program in her parish.

18. In many of her charitable, civic and religious activities, referred to above in Paragraphs 16,17 and 18, respondent has been entrusted with the handling of substantial amounts of cash. She has been honest and trustworthy in each such case. There have never been any complaints about her handling of funds in any case.

19. In June 1995 respondent married her current husband, Christopher Lee. They have a stable and healthy relationship. Respondent is confident she has broken the pattern of self-destructive personal behavior that contributed to her past misconduct. She greatly appreciates the many positive changes in her life during the last 10 years, which she attributes entirely to God's providence. Respondent testified persuasively that she now helps others as a way of showing gratitude for her many blessings. Her testimony and evidence indicate that she is sincerely remorseful, and genuinely committed to living a life of diligence, charity and honesty.

20. Respondent and her current husband are very secure financially. They have sufficient non-cash assets from which to pay the full amount of respondent's restitution obligation. On the advice of her probation officer, respondent plans to continue paying restitution at the rate of \$300.00, or more, per month until the end of her probation. At that point, she and her husband plan to take whatever steps are necessary, including the liquidation of personal assets, to pay her remaining restitution obligation in full.

LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists for the denial of respondent's license application, pursuant to Business and Professions Code Sections 480(a)(1) and 10177(b), for pleading guilty to a felony involving moral turpitude. As established by Findings 3,4,5,6,7,8 and 9,

respondent entered a plea of guilty in 1986 to the felony grand theft charge against her, but her guilt was never adjudicated. To the contrary, the court expressly withheld adjudication of guilt in her case. In such cases, under Florida law, "this means that the defendant was never convicted of this felony." Malcolm v. State (Fla. 3d DCA 1992) 605 So.2d 945,948. In this administrative proceeding, however, the provisions of Sections 480(a)(1) and 10177(b) require only that complainant prove that respondent pled guilty to a felony. A judgment of conviction need not be proven.

2. The coercive influence of respondent's former husband, Richard Luckey, as established by Finding 13, is considered as a mitigating circumstance in this case.

3. Respondent has demonstrated an excellent record of rehabilitation since October 1987, as established by Findings 10,11,12,14,15,16,17,18,19 and 20. It has been 13½ years since respondent was arrested, and over 12½ years since she was placed on probation. Respondent has an outstanding record of compliance with the terms and conditions of her probation, especially during the last 10 years. She has paid approximately two thirds of her restitution obligation to date, and she has a realistic plan for paying all of the remaining balance by the end of her probation. Since moving to California, respondent has been employed at all times. She has demonstrated a significant and conscientious involvement in an impressive variety of civic, charitable and religious activities. These activities have provided respondent with numerous opportunities for dishonest or fraudulent conduct, but she has never strayed from the path of reform and rehabilitation. Respondent now enjoys a stable and healthy marriage, and her undisputed testimony supports the conclusion that she is unlikely to return to the self-destructive behaviors that contributed to her past misconduct. These factors combine to establish a high level of rehabilitation under Title 10, California Code of Regulations, Section 2911.

4. In light of all the foregoing factors, and in recognition of respondent's impressive record of consistent and ongoing rehabilitation, it would not be contrary to the public interest for respondent to hold a properly conditioned restricted real estate salesperson's license.

ORDER

WHEREFORE, THE FOLLOWING ORDER IS HEREBY MADE:

Respondent's application for a real estate salesperson's license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code Section 10156.5. The restricted license so issued to 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 the authority of Business and Professions Code Section 10156.6:

1. The restricted 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 to respondent under the restricted license in the event of:

- (a) The conviction of respondent (including any conviction based upon a plea of *nolo contendere*) of a crime which is substantially related to respondent's fitness or qualifications as a real estate licensee; or
- (b) The receipt of evidence that respondent has violated any provisions of the California Real Estate Law, the Subdivided Lands Law, the Regulations of the Real Estate Commissioner or any conditions, limitations or restrictions attaching to the restricted license.

2. Respondent shall not be eligible to apply for either the issuance of an unrestricted real estate license or the removal of any of the limitations, conditions or restrictions attaching to the restricted license unless she also submits, with her application therefor, satisfactory evidence both of her successful completion of all the terms and conditions of her probation in Hillsborough County Circuit Court Case No. 85-7564-E, entitled State of Florida vs. Diane McKenney Luckey, and of the termination of her probation.

3. Respondent shall submit, with her application for the restricted license, and shall at all times maintain with the Department of Real Estate while the restricted license is in effect, a statement signed by her employing broker, on a form 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 respondent, and will otherwise exercise close supervision over the respondent's performance of any and all acts for which a real estate license is required.

4. The restricted license shall be subject to the requirements of Business and Professions Code Section 10153.4, to wit: within eighteen (18) months of

the issuance of the restricted license, respondent shall submit evidence satisfactory to the Real Estate Commissioner of her successful completion, at an accredited institution, of two (2) of the courses listed in Business and Professions Code Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance, or advanced real estate appraisal. If respondent fails to submit such satisfactory evidence of her continuing education, the restricted license shall be automatically suspended effective eighteen (18) months after the issuance of the restricted license. Any such suspension of the restricted license shall remain in effect until respondent has submitted the required satisfactory evidence of her continuing education and the Real Estate Commissioner has given written notice to respondent of the lifting of the suspension.

5. Notwithstanding any other provision of this Decision to the contrary, if respondent has not satisfied the requirements for an unqualified license under Business and Professions Code Section 10153.4 within the time specified in this Decision, then pursuant to Business and Professions Code Section 10154 respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Business and Professions Code Section 10153.4, until four years after the date of the issuance of the preceding restricted license.

DATED: February 2, 1999



JOHN F. GRANNIS
Administrative Law Judge Pro Tem
Office of Administrative Hearings

SACTO

198-0714-017
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
NOV 29 1998
DEPARTMENT OF REAL ESTATE

In the Matter of the Application of) NO. H-27876 LA
)
DIANE VIRGINIA LEE,) NOTICE OF HEARING ON APPLICATION
)
)
Respondent.) L- 1998 110 224

By [Signature]

To the above-named Respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 107 South Broadway, 2nd. Floor, Los Angeles, California 90012 on January 5, 1999. at 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you.

You may be present at the hearing: You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: November 20, 1998

DEPARTMENT OF REAL ESTATE

By: James R. Peel
JAMES R. PEEL
DRE, Counsel

cc: Diane V. Lee
JL, OAH & SACTO

SACTO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

JAMES R. PEEL, Counsel
California Bar No. 47055
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, CA 90012
(213) 897-3937

FILED
OCT 15 1998
DEPARTMENT OF REAL ESTATE
By [Signature]

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Application of) NO. H- 27876 LA
)
DIANE VIRGINIA LEE,) STATEMENT OF ISSUES
)
Respondent.)
_____)

The Real Estate Commissioner, in conformity with Section 10152, Division 4, Business and Professions Code of the State of California, requires further proof of the honesty and truthfulness of DIANE VIRGINIA LEE, (hereinafter referred to as respondent), in connection with respondent's application for a real estate salesperson license, filed on June 19, 1998, and in relation thereto, will consider the following:

I

Respondent, pursuant to the provisions of Section 10153.3 of the Business and Professions Code, made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about June 19, 1998 with

1 the knowledge and understanding that any license issued as a
2 result of said application would be subject to the conditions of
3 Section 10153.4 of the Business and Professions Code.

4 II

5 On or about March 12, 1986, in the Circuit Court for
6 the County of Hillsborough, State of Florida respondent was
7 convicted of Grand Theft in the First Degree, a crime involving
8 moral turpitude.

9 III

10 The crime of which respondent was convicted bears a
11 substantial relationship to the qualifications, functions or
12 duties of a real estate licensee.

13 IV

14 Respondent's conviction is grounds for denying
15 respondent's application for a real estate license under
16 Sections 480 and 10177(b) of the Business and Professions Code
17 of the State of California.

18 These proceedings are brought under the provisions of
19 Section 10100, Division 4 of the Business and Professions Code
20 of the State of California and Sections 11500 through 11528 of
21 the Government Code.

22 Dated at Los Angeles, California this 14th day of
23 October, 1998.

24
25 CC: DIANE VIRGINIA LEE
Sacto. JL

26 JRP:rgp
27


Deputy Real Estate Commissioner

