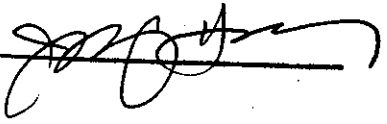


50070

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

FILED
OCT 28 2004

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of) NO. H-28891 LA
SARKIS KALONYAN,)
Respondent.)

ORDER GRANTING UNRESTRICTED LICENSE

On April 2, 2001, a Decision was rendered Herein, denying Respondent's application for a real estate license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on May 30, 2001 and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On or about February 18, 2004, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

///
///
///

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

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for removal of restrictions is granted and that a
10 real estate salesperson license be issued to him subject to
11 the following understanding and conditions:

12 1. The license issued pursuant to this order shall
13 be deemed to be the first renewal of respondent's real estate
14 salesperson license for the purpose of applying the provisions
15 of Section 10153.4.

16 2. Within nine (9) months from the date of this order
17 Respondent shall:

18 (a) Submit a completed application and pay the
19 appropriate fee for a real estate salesperson license, and

20 (b) Submit evidence of having taken and successfully
21 completed the courses specified in subdivisions (a) (1),
22 (2), (3) and (4) of Section 10170.5 of the Real Estate
23 Law for renewal of a real estate license.

24 ///

25 ///

26 ///

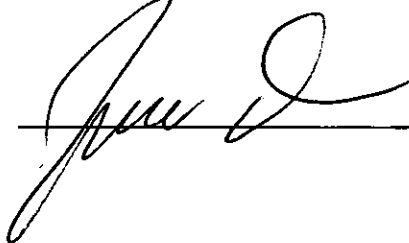
27 ///

1 3. Upon renewal of the license issued pursuant to
2 this order, respondent shall submit evidence of having taken and
3 successfully completed the continuing education requirements of
4 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
5 real estate license.

6 This Order shall be effective immediately.

7 Dated: 10-20-04.

8 JEFF DAVI
9 Real Estate Commissioner

10
11 
12
13
14

15
16
17
18
19
20
21
22
23
24
25 cc: Sarkis Kalonyan
26 1026 E. Harvard Road
27 Burbank, CA 91501

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

**In the Matter of the Application of
SARKIS KALONYAN,
Respondent.**

**Case No. H-28891 LA
OAH No. L2001010086**

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on February 22, 2001.

Complainant, Thomas McCrady, was represented by Martha J. Rosett, Staff Counsel.

Respondent, Sarkis Kalonyan ("Respondent"), was present and was represented by Garbis N. Etmekjian, Attorney at Law.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. The Statement of Issues was made by Thomas McCrady, Complainant, who is a Deputy Real Estate Commissioner of the State of California, acting in his official capacity.

///

///

///

2. On or about July 31, 2000, Respondent submitted an application to the Department of Real Estate ("the Department") for a real estate salesperson's license, on the condition that any license issued as a result of that application would be subject to completion of certain educational requirements as set forth in Business and Professions Code section 10153.4. The application was denied and this matter ensued.

3. Since submitting his application, Respondent has satisfied the educational requirements referenced in Paragraph 2, above.

4. In response to Question No. 25 on the application, Respondent denied having been convicted of any violation of law. That answer was incorrect.

5. On September 14, 1995, in Municipal Court of Burbank Judicial District, County of Los Angeles, State of California, in Case No. 95M2712, Respondent was convicted, on his plea of nolo contendere, of violation of Penal Code section 484(a) (Theft of Property), a crime involving moral turpitude, and one substantially related to the qualifications, functions and duties of a real estate licensee.

6. Respondent was placed on summary probation for a period of one year. He was ordered to pay fines and restitution totaling three hundred seventy dollars (\$370) and was ordered to stay away from Hughes Markets.

7. The facts and circumstances underlying the conviction are that, while shopping in a Hughes Market, Respondent selected a pair of sunglasses he wished to purchase. He placed the glasses in his breast pocket rather than in his shopping cart to prevent the glasses from getting scratched. He forgot to remove them from his pocket when he paid for the rest of his items at the check stand.

8. On December 27, 1996, the Court vacated Respondent's plea, entered a plea of not guilty, and dismissed the complaint pursuant to Penal Code section 1203.4.

9. Respondent, for whom English is a second language, filled out the application for Real Estate Salesperson license alone and unaided. In his excitement over the prospect of becoming a licensed real estate salesperson, he read and answered the questions on the application hurriedly, completing the entire application in approximately five minutes. He failed to carefully read Question 25, and understood it to mean that he did not need to disclose his conviction because it had been dismissed by the court. He now recognizes that his reading of Question 25 was erroneous but believed he was answering the question accurately when he was completing the application.

///

10. Respondent is married and has three children, ages 20, 19 and 16. His wife and all three children reside with him and he shares a close relationship with each of them. He immigrated to the United States with his wife, his children and his parents in 1992. He was a businessman in his native Armenia, but he began driving a taxi shortly after his arrival in the United States to support his family. He immediately began taking English as a Second Language ("ESL") classes at Glendale Career College and Glendale Community College.

11. For the last few months, Respondent has driven a taxi part-time and has been working part-time at Mulhearn Realtors in Glendale. His duties include answering telephone calls, taking messages and performing other tasks that do not require him to possess a real estate license.

12. Respondent has an excellent reputation in the community for honesty and integrity. His employers are aware of his conviction and his failure to accurately complete Question 25 on the application. Nonetheless, they believe in his ability, his sincerity, and his integrity, and are willing to hire and supervise him should he receive either a restricted or an unrestricted license.

13. Respondent was very credible in expressing his sincere remorse for the errors he made both with respect to the sunglasses and with respect to the omission on his application for licensure. He has an intense desire to become a real estate salesperson because he enjoys the work, loves to work with and be of service to people, and because he genuinely wants to "make their wishes come true". He is certain he will not make a similar mistake on a form again because he intends to be far more careful, answer questions "more professionally and be more watchful". He believes he has learned a very valuable lesson.

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 application pursuant to Business and Professions Code section 480, as that section interacts with section 10177(b), for conviction of a crime, as set forth in Findings 5, 6 and 7.

2. Cause exists for the denial of Respondent's application pursuant to Business and Professions Code sections 480(c), for knowingly making a false statement of fact required to be revealed on an application for licensure, as set forth in Findings 4, 5, 6, 7 and 9.

///

Although Respondent firmly believes he did not commit a crime, but rather simply made a mistake, when he left the market with the sunglasses in his pocket, his plea of nolo contendere to a charge of petty theft serves as an admission of every element of the crime.

“Regardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged.” (Arneson v. Fox (1980) 38 Cal.3d 440, 449.)

To determine whether Respondent “knowingly” made a false statement on his application, one must look to the definition of the word. Brown v. State Department of Health (1978) 86 Cal.App.3d 548, 554 permits the use of Penal Code section 7 to define terms in other codes. Penal Code section 7 provides in pertinent part:

“The word ‘knowingly’ imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.”

Whether or not he believed it was necessary to disclose his conviction on the application, Respondent was aware, at the time he filled out the application, that he had been convicted of a crime. It is that knowledge that brings his conduct under the purview of Business and Professions Code section 480(c).

The unfortunate aspect of this case is that Respondent, who, by all the evidence, is qualified, motivated, enthusiastic, trusted, and well-respected, compounded one major mistake on another by first forgetting about the sunglasses in his pocket, and then by misunderstanding the requirements on his application for licensure. Learning from Respondent’s experience, it certainly appears that Respondent poses a greater risk to the public from his carelessness than from his dishonesty.

The fortunate aspect of this case is that Respondent truly seems to have learned from his mistakes. He now recognizes the need to slow down and to seriously consider his task and the possible ramifications of an error, and to proceed cautiously. If he carefully practices these strategies, he is unlikely to make similar mistakes in the future.

///

///

///

Respondent has satisfied the majority of the Department's applicable criteria of rehabilitation as set forth in Title 10, California Code of Regulations, section 2911. More than two years have passed since his conviction [Criterion (a)]. He has paid his restitution [Criterion (b)]. His conviction has been "expunged"¹ [Criterion (c)]. He paid the fines he incurred in connection with his conviction [Criterion (f)]. He enjoys a stable family life [Criterion (g)]. He has changed his attitude from that which existed at the time he made his errors, by making a conscious effort to be more careful and professional in his activities, be they in a supermarket, in a real estate office, or elsewhere.

In light of the circumstances underlying the conviction and Respondent's failure to disclose the conviction on his application for licensure, and in light of Respondent's fine rehabilitative efforts, the public interest should be adequately protected by the issuance of a properly conditioned restrictive license.

ORDER

WHEREFORE THE FOLLOWING ORDER is hereby made:

Respondent'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 the 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 this 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 this restricted license.

///

¹ The dismissal pursuant to Penal Code section 1203.4 is not an "expungement" in the true sense of the word. However, it satisfies Criterion (c).

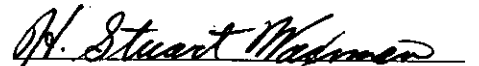
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two (2) years have elapsed from the date of issuance of the restricted license to Respondent.

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.

DATED: March 19, 2001


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

*Sacto
Hoy*

FILED
JAN 16 2001
DEPARTMENT OF REAL ESTATE

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

By *Sanna B. ...*

In the Matter of the Application of) Case No. H-28891 LA
)
SARKIS KALONYAN,)
)
)
Respondent(s))

NOTICE OF HEARING ON APPLICATION

To the above-named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on **FEBRUARY 22, 2001** at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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 and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: January 16, 2001

DEPARTMENT OF REAL ESTATE

By: *Martha J. Rosett*
MARTHA J. ROSETT, Counsel

cc: Sarkis Kalonyan
Garbis N. Etmekjian, Esq.
Mulhearn Realtor
Sacto.
OAH

Jack

MARTHA J. ROSETT, Counsel (SBN # 142072)
Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, California 90013

FILED
DEC 5 2000
DEPARTMENT OF REAL ESTATE

(213) 576-6982
(213) 576-6914

By *Laura B. Drum*

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

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of)	No. H-28891 LA
)	
SARKIS KALONYAN,)	
)	
)	<u>STATEMENT OF ISSUES</u>
)	
Respondent.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against SARKIS KALONYAN alleges as follows:

1

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

2

On or about July 31, 2000, pursuant to the provisions of Section 10153.3 of the Business and Professions Code, Respondent SARKIS KALONYAN (hereinafter "Respondent") made

1 application to the Department of Real Estate of the State of
2 California (hereinafter "Department") for a real estate
3 salesperson license with the knowledge and understanding that any
4 license issued as a result of said application would be subject
5 to the conditions of Section 10153.4 of the California Business
6 and Professions Code.

7 3

8 In response to Question 25 of said application, to wit:
9 "Have you ever been convicted of any violation of law,"
10 Respondent answered "No."

11 4

12 On or about September 14, 1995, Respondent was
13 convicted on his plea of nolo contendere to one count of
14 violating California Penal Code Section 484(a) (petty theft), a
15 crime of moral turpitude substantially related to the
16 qualifications, functions and duties of a real estate licensee.
17 Imposition of sentence was suspended, and Respondent was placed
18 on summary probation for one year. On or about December 27,
19 1996, Respondent's conviction was set aside and the complaint was
20 dismissed pursuant to Penal Code Section 1203.4.

21 5

22 Respondent's failure to reveal the conviction set forth
23 in Paragraph 4 constitutes an attempt to procure a real estate
24 license by misrepresentation or by making a material misstatement
25 of fact in an application for a real estate license, and is
26 grounds for denial of Respondent's application for a real estate
27 license pursuant to Business and Professions Code Sections 480(c)



1 and 10177(a).

2 6

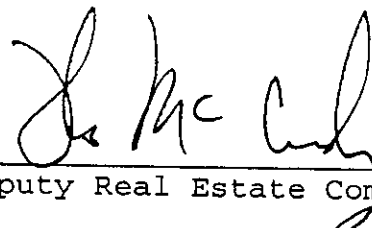
3 Respondent's conviction, as set forth in Paragraph 4,
4 constitutes grounds for denial of Respondent's application for a
5 real estate license pursuant to Business and Professions Code
6 Sections 480(a) and 10177(b).

7 These proceedings are brought under the provisions of
8 Section 10100, Division 4 of the Business and Professions Code of
9 the State of California and Sections 11500 through 11528 of the
10 Government Code.

11 WHEREFORE, the Complainant prays that the above-
12 entitled matter be set for hearing and, upon proof of the charges
13 contained herein, that the Commissioner refuse to authorize the
14 issuance of, and deny the issuance of, a real estate salesperson
15 license to Respondent SARKIS KALONYAN and for such other and
16 further relief as may be proper under the law.

17 Dated at Los Angeles, California

18 this 5th day of December, 2000.

19 
20 Deputy Real Estate Commissioner

21
22
23
24 cc: SARKIS KALONYAN
25 Sacto.
26 TM
27 LF

