

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By 

No. H-28971 LA

L-2001030547

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The Proposed Decision dated September 17, 2001, 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 right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

October 22, 2001.

Real Estate Commissioner

Paula Reddick

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of:

BARBARA CARROLL REED,

Respondent.

Case No. H-28971 LA

OAH No. L2001030547

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, at Los Angeles, California on July 12, 2001.

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

Respondent, Barbara Carroll Reed ("Respondent"), was present and was represented by August G. Carloni, Attorney at Law.

Oral and documentary evidence was received. The record was held open to and including September 10, 2001 for Respondent to obtain and submit a transcript of the sentencing hearing in her criminal case, together with a written explanation/argument in connection therewith, and for Complainant to submit a written response thereto, pursuant to a specified filing schedule. All documents were timely received. The transcript, dated September 29, 2000, in The People of the State of California vs. Barbara Carroll Reed, Superior Court of the State of California for the County of El Dorado, Case No. S00CRF0046, was marked and admitted as Respondent's Exhibit "H." A letter dated August 1, 2001, to the Administrative Law Judge from August G. Carloni, was marked as Respondent's Exhibit "I" for identification. A letter dated August 17, 2001, to the Administrative Law Judge from Martha J. Rosett, was marked as Complainant's Exhibit 5 for identification.

On September 10, 2001, the record was closed and the matter was deemed submitted for decision.

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FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

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

2. Respondent was issued a license as a real estate broker by the Department of Real Estate ("the Department") on October 30, 1991. The license will expire on October 29, 2003 unless renewed.

3. On September 29, 2000, in Superior Court of California, County of El Dorado, in Case No. S00CRF0046, Respondent was convicted, on her plea of nolo contendere, of violation of Health and Safety Code section 11379(b) (transport for sale of a controlled substance), a felony involving moral turpitude, and a crime substantially related to the qualifications, functions and duties of a real estate licensee.

4. Respondent was placed on formal probation for a period of 36 months under various terms and conditions including incarceration for a period of one day with credit for one day time served, payment of fines and restitution totaling \$4035.00 plus the cost of probation supervision not to exceed \$20.00 per month, abstention from possession/use of dangerous narcotics including marijuana, submission to chemical testing of blood, breath or urine upon request, participation in counseling for substance abuse and performance of 1000 hours of community service. The court included in its Order that it will consider probation termination after 18 months if Respondent is in compliance with the terms and conditions of probation.

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5. The facts and circumstances underlying the conviction arose out of Respondent's friendship with another woman. The two women regularly engaged in recreational drug use which included marijuana, cocaine and methamphetamines. Respondent's friend introduced Respondent to another individual who was able to sell a regular supply of illegal drugs. At her friend's request and on her friend's behalf, Respondent purchased drugs from that individual on approximately three occasions, usually for a sum in the area of \$250.00. On the third occasion, Respondent's friend handed a Federal Express envelope from her place of employment to Respondent and asked Respondent to mail the drugs to a third party. Respondent complied with her friend's request. Shortly thereafter, the individual to whom Respondent had mailed the drugs telephoned Respondent and asked if she could obtain larger quantities of illegal drugs. Respondent told her she had never done such a thing but would let her know. The other woman then sent \$500.00 to Respondent's friend who forwarded it to Respondent. Respondent added another \$100.00 to that sum and gave it to the individual from whom she purchased the drugs. As was her custom, that individual left their meeting place to obtain the drugs, but this time she failed to return. She later informed Respondent that she had been arrested and was therefore unable to complete the transaction. Respondent then informed the other two women that she would no longer participate in the illegal drug purchasing and transporting activity.

6. According to the allegation in the criminal complaint to which Respondent pled nolo contendere, Respondent was involved in the drug purchase/transportation scheme only between September 25 and October 10, 1999, a period of just 15 days. She terminated her involvement in the scheme some four months before her arrest. Respondent has completely abstained from the use of any recreational drugs since approximately four days prior to her arrest. She terminated her relationships with the other women involved in the drug purchase/transportation scheme before being ordered to stay away from them as one of the terms of her probation.

7. Respondent's drug use was limited to her off-duty hours. She never used drugs while working, was never under the influence of drugs while working, and her drug use never interfered with her professional duties.

8. Respondent is a long time resident of Running Springs, a small town of approximately 3000 residents, located near Big Bear and Lake Arrowhead. She has worked for only one real estate company since receiving her real estate salesperson's license in May of 1978. She purchased the company from its owner at approximately the time she became a broker. Her company's business is limited to property management of rental properties in the Big Bear/Lake Arrowhead area. Neither her salesperson's nor broker's license has ever been disciplined by the Department and, to her knowledge, she has never been the subject of any complaint filed with the Department.

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9. Respondent enjoys an outstanding reputation for honesty and integrity in the community and is a highly respected businesswoman. Her neighbor, a retired Pomona Police Department narcotics officer, and her business associates were shocked to learn of her arrest, believing Respondent to have been a paragon of exemplary conduct within the community. Respondent is a member of the local Chamber of Commerce and donates money to appropriate causes.

10. Respondent is divorced and is engaged to be married to a man she has known for 20 years. Her fiancé is not involved in drug use and he is aware of her conviction. Respondent has three grown daughters. She is also the guardian of her 9-year-old niece, whom she has been raising since the child's mother (Respondent's sister) died of cancer. A custody hearing was held for Respondent's niece shortly after Respondent's arrest. As a result of that hearing, the niece was returned to Respondent on grounds that there were no signs of neglect, and that Respondent had sequestered her niece away from all drugs and drug-related conduct.

11. Respondent is presently in compliance with the terms and conditions of her probation. She is making payments on her fines and restitution in accordance with a specified payment schedule. Her payments will be accelerated in the event of early termination of probation. On one occasion, Respondent was evaluated by a physician in connection with the requirement that she receive drug counseling. That physician found that she was not in need of drug counseling and declined to recommend any such counseling or treatment. The Probation Department accepted the physician's evaluation as compliance with the drug-counseling condition of probation.

12. Respondent has been very active in her court-ordered community service. The organizations with which she has worked have provided glowing reports regarding her strong efforts and positive attitude. She has enjoyed the work and is considering joining some of those organizations. Respondent recently participated in Red Ribbon Week ("Say No to Drugs") at her niece's school. Her fiancé's daughters, ages 9 and 11, also attend that school.

13. Since her arrest, Respondent has expressed her sincere remorse over her extreme lapse in judgment which enabled her to become embroiled, albeit for a very brief period of time, in the unsavory act of illegal drug transportation. She is equally remorseful over the effect her acts have had on her family and, most importantly, her niece. Respondent is dedicated to ensuring that she will never engage in drug use (much less drug transportation) again, and she is convinced she will succeed. She does not associate with anyone whom she is aware takes drugs. Respondent has had no prior or subsequent negative involvement with the criminal justice system.

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14. The following facts are considered as additional factors in mitigation:

- a. Respondent held a relatively minor role in the drug purchase/transportation scheme as compared to that of her friend.
- b. Respondent acted out of friendship rather than avarice, having received nothing in return for her illegal drug related activity.
- c. Respondent's temporal involvement with the drug purchase/transportation scheme was extremely limited. She terminated that involvement well before her arrest.
- d. Respondent was involved in transporting drugs to only one individual. That individual purchased the drugs for personal use only.
- e. Respondent admitted her guilt very quickly following her arrest.
- f. Respondent was candid about her involvement in the drug purchase/transportation scheme not only with law enforcement and judicial authorities, but with friends, neighbors and co-workers as well.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to revoke or suspend Respondent's real estate broker's license pursuant to Business and Professions Code sections 490 and 10177(b) (conviction of a crime), as set forth in Findings 3, 4, 5 and 6.

This case involves a real estate broker with a spotless record and an impeccable reputation in the business community who, for approximately two weeks, engaged in felonious conduct involving the transportation of illegal drugs. The parties correctly agree that license discipline is warranted in this case. The issue is the nature of the discipline to be imposed.

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"The object of an administrative proceeding aimed at revoking a license is to protect the public, that is, to determine whether a licensee has exercised his privilege in derogation of the public interest, and to keep the regulated business clean and wholesome. Such proceedings are not conducted for the primary purpose of punishing an individual."

Small v. Smith (1971) 16 Cal.App.3d 450, 457. (See also, Camacho v. Youde (1979) 95 Cal.App.3d 161, 164; Clerici v. Department of Motor Vehicles (1990) 224 Cal.App.3d 1015, 1029.)

The Department has compiled a list of criteria of rehabilitation, set forth at Title 10, California Code of Regulations, section 2912, as an aid in evaluating the degree to which a licensee is rehabilitated for purposes of license discipline. Respondent does not meet several of the criteria relating to the conviction and the terms and conditions of probation because insufficient time has elapsed since the conviction for her to have satisfied those criteria [Criteria (a), (b), (c), (d), (e), and (f)]. However, Respondent is presently in compliance with the terms and conditions of probation, is making regular payments on the fines and restitution as required, and is making satisfactory progress with respect to her community service. Although Criterion (a) calls for the passage of at least two years since the most recent conviction, Respondent is just short of two years since the commission of her last act of transporting illegal drugs.

No requirement exists that a licensee satisfy a certain number or percentage of the criteria of rehabilitation in order to avoid license revocation. Respondent does satisfy a number of the Department's other criteria, specifically, Criteria (h), (i), (k) and (l).

In addition, the various mitigating factors referenced in Findings 6, 7, 9, 10 and 14, compensate for the relatively short period of time that has elapsed since Respondent's conviction. Those factors, coupled with the criteria of rehabilitation that Respondent does meet, militate against outright revocation in this case. Further, in light of Respondent's exceptional record, the very brief period of time during which she engaged in illegal activity, her early termination of both drug transportation and drug use, and the fact that her criminal acts were committed in connection with her private, rather than her professional life, outright license revocation is deemed to be unreasonably harsh.

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However, because Respondent is a real estate broker, she is licensed to work unsupervised.¹ Thus, the Department has no safeguards to ensure Respondent's complete rehabilitation and proper professional conduct. Given the seriousness of her crime and the recency of her conviction, to permit Respondent to continue working in that capacity would present an unacceptable risk to the public.

In light of all of the above factors, the public interest will be adequately and equitably protected by the revocation of Respondent's real estate **broker's** license and the issuance of a properly-conditioned restricted real estate **salesperson's** license.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Barbara Carroll Reed, under the Real Estate Law are revoked; provided, 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 therefor and pays to the Department 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 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. 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. 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 five (5) years have elapsed from the effective date of this Decision.

¹ Respondent has indicated a willingness to be supervised by another broker. However, only a limited number of brokers work in the Running Springs area. Those brokers are proscribed from supervising her because of their franchise affiliations.

4. 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 real estate salesperson's 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. Respondent shall, within nine (9) 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.

DATED: September 17, 2001



H. STUART WAXMAN

Administrative Law Judge

Office of Administrative Hearings

Sacto. May

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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FILED
MAY 24 2001
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)

BARBARA CARROLL REED,)

Respondent.)

Case No. H-28971 LA

OAH No. L-2001030547

NOTICE OF CONTINUED HEARING ON ACCUSATION

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 **July 12, 2001**, at the hour of **1:30 p.m.**, or as soon thereafter as the matter can be heard, upon the Accusation 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.

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

Dated: May 24, 2001.

cc: Barbara Carroll Reed
August G. Carloni, Esq.
Sacto.
OAH

DEPARTMENT OF REAL ESTATE

By:


SEAN CRAHAN for
MARTHA J. ROSETT, Counsel

Sacto.
Flay

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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FILED
APR - 6 2001
DEPARTMENT OF REAL ESTATE

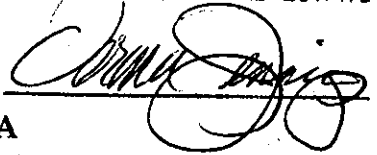
In the Matter of the Accusation of)

BARBARA CARROLL REED,)

Respondent.)

Case No. H-28971 LA
OAH No. L-2001030547

By



NOTICE OF HEARING ON ACCUSATION

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 **May 22, 2001**, at the hour of **1:30 p.m.**, or as soon thereafter as the matter can be heard, upon the Accusation 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.

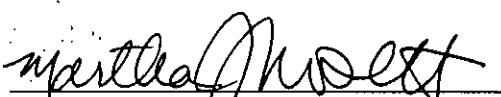
You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real 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 his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: April 6, 2001

cc: Barbara Carroll Reed
Sacto.
OAH

DEPARTMENT OF REAL ESTATE

By: 
MARTHA J. ROSETT, Counsel

1 MARTHA J. ROSETT, Counsel (SBN # 142072) ---
2 Department of Real Estate
3 320 West Fourth St. #350
4 Los Angeles, CA 90013

5 (213) 576-6982
6 (213) 576-6914
7

FILED
FEB 23 2001
DEPARTMENT OF REAL ESTATE

By Laura B. Dione

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of) No. H-28971 LA
12 BARBARA CARROLL REED,)
13 Respondent.) A C C U S A T I O N
14 _____)

15 The Complainant, Thomas McCrady, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against BARBARA CARROLL REED ("Respondent")
18 alleges as follows:

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20 The Complainant, Thomas McCrady, a Deputy Real
21 Estate Commissioner of the State of California, makes this
22 Accusation in his official capacity.

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24 Respondent is presently licensed and has license
25 rights under the Real Estate Law (Part 1 of Division 4 of
26 the California Business and Professions Code, hereinafter
27 "Code") as a real estate broker.

On or about September 29, 2000, in the El Dorado County Superior Court, Respondent was convicted on her plea of nolo contendere to one count of violating California Health & Safety Code Section 11379 (b) (transportation for sale of controlled substance: methamphetamine), a felony and a crime of moral turpitude substantially related to the qualifications, functions or duties of a real estate licensee. Respondent was sentenced to three years formal probation, \$2,500 in fine, serve 1000 hours of community service, and participate in drug testing and treatment.

The facts alleged above constitute cause under Sections 490 and 10177(b) of the Business and Professions Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that
3 upon proof thereof, a decision be rendered imposing
4 disciplinary action against all licenses and/or license
5 rights of BARBARA CARROLL REED under the Real Estate Law and
6 for such other and further relief as may be proper under
7 applicable provisions of law.

8 Dated at Los Angeles, California

9 this 22 day of February, 2001

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12 Deputy Real Estate Commissioner
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25 cc: BARBARA CARROLL REED
26 Sacto.
Thomas Mc Crady
JN
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