

FILED
JUL 18 2003
DEPARTMENT OF REAL ESTATE

Sandra B. Chow

No. H-29949 LA

L-2003030334

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

MERCEDEH CHRISTINE JAVID,

Respondent.

Case No. H-29949 LA

OAH No. L2003030334

PROPOSED DECISION

This matter came on regularly for hearing before Mark T. Roohk, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California on May 28, 2003.

Chris Leong, Real Estate Counsel, represented Complainant Maria Suarez ("Complainant").

Scott Baker, Esq., Lent Baker & Sussman, represented Respondent Mercedeh Christine Javid ("Respondent"), who was present throughout the hearing.

Oral and documentary evidence was received, the matter argued, the record was closed at the conclusion of the hearing and the case submitted for decision.

FACTUAL FINDINGS

1. Complainant Maria Suarez, Deputy Real Estate Commissioner of the State of California, made and filed the Statement of Issues in this proceeding in her official capacity and not otherwise.

2. Respondent Mercedeh Javid filed an application with the Department of Real Estate ("Department") on or about April 20, 2002, for the issuance of a Real Estate Salesperson License in accordance with the provisions of Business and Professions Code section 10153.4. The application was denied. Respondent appealed the denial, and this hearing followed.

3. On November 29, 1994, Respondent was convicted in case number CR94-369 of the United States District Court for the Central District of California on her plea of guilty to one count of violating 18 USC 1344 (bank fraud), a crime involving moral turpitude and one which is substantially related to the qualifications, functions, and duties of a real estate salesperson. As the result of the conviction, Respondent was sentenced to and served one month in prison, and thereafter was placed on probation for three (3) years, beginning with five (5) months of home confinement, and was required among other conditions to pay restitution in the amount of \$10,000.

4. The facts and circumstances underlying the conviction are that in or about December 1994, while Respondent was employed as a bank teller at Home Savings in Beverly Hills, she was approached by four men who asked her to take part in a fraud scheme. Specifically, the men wanted Respondent to deposit funds for them in a number of accounts without placing any hold on the deposits, and then withdraw funds and give the money to them. Respondent did not personally know any of the men, and only remembered seeing them approximately one year earlier at her father's auto repair shop.

At first, Respondent refused to take part in the scheme, but the men threatened her, her father, and her boyfriend, and she agreed to assist them. Respondent eventually made several deposits (between four and ten) on behalf of the men, involving monetary funds in excess of \$100,000 and utilizing at least four different accounts, including her own personal account at the bank. Respondent also made several ATM withdrawals (between five and nine) from her own account, always for the maximum permitted amount of \$500, and gave that money to the men. This activity took place during approximately a two week period in late December 1990. The bank eventually discovered the activity and a hold was placed on Respondent's account. Respondent stopped showing up for work in January 1991, and so the activity was not discussed with her until approximately 1993, when she was interviewed by the FBI. She was subsequently charged with the crime for which she eventually pled guilty in April 1994.

5. Respondent accepts responsibility for her conviction and admits her role in the criminal activity. She testified that she never had any intention of getting involved in such a scheme, but the men were both threatening and persistent, and she eventually became so scared that she finally agreed to cooperate. Respondent herself never received any monetary benefit from the scheme, nor was any financial incentive offered to her by the men. At the time of the activity, Respondent was 18 years old, and was working her first "real" job since graduating from high school. Respondent had grown up in a small town in Virginia, and had moved to Los Angeles with her father two years earlier after her parents had divorced. Respondent described herself at the time of the activity as somewhat sheltered and very naïve. She had no idea what to do when confronted with such a situation, but she finally chose to cooperate out of fear of what might otherwise happen to her and her loved ones if she did not cooperate.

As for her criminal sentence, Respondent spent one month in prison, and then completed her three year probation without incident. Respondent also was able to pay all of the \$10,000 restitution that was ordered, although she had to obtain a loan to do it.

6. Respondent has made extensive attempts to rehabilitate herself since 1991. She has been employed in and has volunteered for several office clerical and administrative positions in which she had financial responsibilities, including an auto repair shop and an accounting firm, and her supervisors there provided letters attesting to their satisfaction with her performance (Exhibits C & D). She has also volunteered at a counseling center and has worked with children. Subsequent to her release from prison, she participated in an "accountability" workshop at which she learned how to better focus and organize her life. At the time of the incident, Respondent had just started college; she dropped out shortly thereafter, but returned later in the 1990's and eventually graduated from Cal State Northridge in 2000 with a degree in English literature. She is close to both her parents since her mother also moved to California, and though her parents have not reconciled, she describes the overall family relationship as very good. She is also close with her extended family, and most of her friends are either professional people or very family-oriented.

7. Respondent is currently working as an assistant at DBL Realtors. Her immediate supervisor and one of the other agents at the firm each submitted letters on her behalf attesting to her dedication, hard work, maturity and trustworthiness (Exhibits A & B). Her supervisor indicates that a position is being held open for her pending the issuance of a salesperson's license.

LEGAL CONCLUSIONS

Cause exists to deny Respondent's application for a real estate salesperson's license pursuant to the provisions of Business and Professions Code sections 480(a) and 10177(b) for conviction of a crime substantially related to the qualifications, functions or duties of a real estate license, as set forth in Findings 3 and 4.

As part of the regulations governing the practice of real estate in the State of California, the Department of Real Estate ("Department") has developed certain criteria, set forth at Title 10 of the California Code of Regulations, Section 2911, for the purpose of evaluating the rehabilitation of an applicant for issuance of a license in considering whether or not to deny the issuance on account of a conviction. As applied to this case, the criteria assist in the process of evaluating evidence of rehabilitation submitted by the Respondent.

A review of those criteria applicable to Respondent's circumstances reveals she has satisfied each of the following:

A. The Guidelines recommend the passage of not less than two (2) years since the most recent criminal conviction. Respondent's conviction occurred in November 1994, over eight (8) years ago. The acts underlying the conviction occurred in December 1990, over twelve (12) years ago. Further, this is Respondent's only conviction.

B. Respondent has paid all restitution ordered by the Court.

C. Respondent successfully completed her probation in a timely manner.

D. Respondent's family life is much improved since the time of her criminal conduct. Specifically, she now has a close relationship with her mother and father, as well as her extended family, and has developed a supportive network of friends and colleagues.

E. Respondent has successfully completed her studies and has graduated from college.

F. Respondent has volunteered her time both at a counseling center and in working with children.

G. Respondent has worked in numerous jobs involving a degree of financial responsibility since the time of her criminal conduct without negative incident.

Certainly, Respondent has met most of the applicable criteria for demonstrating rehabilitation, as set forth above. Accordingly, she has established that she deserves a chance to be licensed as a real estate salesperson. Respondent has only this one conviction on her record, and it is based on acts that occurred over a decade ago, when Respondent was still a teenager and under great duress. However, this is not just any conviction, but one for bank fraud, involving amounts well in excess of \$100,000. Therefore, even though Respondent has demonstrated sufficient rehabilitation to be entitled to a license, the crime she committed, involving fiscal dishonesty on a large scale, strongly suggests and in fact mandates that the public interest would be best served if that license were temporarily both restricted and conditional.

ORDER

The application of Respondent Mercedeh Christine Javid 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, and shall be subject to the following limitations, conditions, and restrictions:

1. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in 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 present satisfactory evidence of successful completion of said courses, the restricted license shall be automatically suspended effective eighteen (18) months

after issuance. Said suspension shall not be lifted until Respondent has submitted the required proof of course completion and the Commissioner has given written notice to Respondent of the lifting of the suspension.


2. 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 two years have elapsed from the effective date of this Decision.

3. 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 broker on a form approved by the Department of Real Estate which shall certify:

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 activities for which a real estate license is required.

DATED: 6/16/03



MARK T. ROOHK
Administrative Law Judge
Office of Administrative Hearings

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FILED
MAR 24 2003

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

Laura B. - Dione

In the Matter of the Application of) Case No. H-29949 LA
) L-2003030334
MERCEDEH CHRISTINE JAVID,)
)
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 MAY 28, 2003, 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: March 24, 2003

DEPARTMENT OF REAL ESTATE

By: Chris Leong
CHRIS LEONG, Counsel

cc: Mercedeh Christine Javid
Sacto.
OAH

RE 500 CL:lbo

1 CHRIS LEONG, Counsel (SBN 141079)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6910 (Direct)

FILED
FEB 11 2003
DEPARTMENT OF REAL ESTATE

Laura B. Clune

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of)
12 MERCEDEH CHRISTINE JAVID,)
13 Respondent.)

No. H- 29949 LA

STATEMENT OF ISSUES

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15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against MERCEDEH CHRISTINE JAVID ("Respondent") alleges as
18 follows:

19 I

20 Respondent, pursuant to the provisions of Section
21 10153.3 of the Business and Professions Code ("Code"), made
22 application to the Department of Real Estate of the State of
23 California for a real estate salesperson license on or about
24 May 29, 2002, with the knowledge and understanding that any
25 license issued as a result of said application would be subject
26 to the conditions of Code Section 10153.4.
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2 II

3 Complainant, Maria Suarez, a Deputy Real Estate
4 Commissioner of the State of California, makes this Statement
5 of Issues in her official capacity.

6 III

7 On or about November 29, 1994, in the U.S. District
8 Court, Central District of California, Case No. CR-94-369 RMT,
9 Respondent was convicted of violating 18 USC 1344 (Bank fraud),
10 a crime involving moral turpitude which is substantially
11 related to the qualifications, functions and duties of a real
12 estate licensee.

13 IV

14 Respondent's conviction, as set forth in Paragraph
15 III, is cause to deny Respondent's real estate license
16 application pursuant to Code Sections 480(a)(1) and 10177(b).

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

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1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the
3 charges contained herein, that the Commissioner refuse to
4 authorize the issuance of, and deny the issuance of, a real
5 estate salesperson license to Respondent, MERCEDEH CHRISTINE
6 JAVID, and for such other and further relief as may be proper
7 in the premises.

8 Dated at Los Angeles, California

9 this 7th day of February, 2003.

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12 Deputy Real Estate Commissioner
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23 cc: Mercedeh Christine Javid
24 Maria Suarez
25 Sacto.
26 LWA
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