

FILED
AUG 19 2004
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Laura B. Crane

* * * * *

In the Matter of the Accusation of) No. H-30308 LA
RENA H. LEI,) L-2003100108
Respondent.)

DECISION

The Proposed Decision dated July 19, 2004, 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.

Pursuant to Section 11517(b)(3) of the Government Code, the following correction is made to the Proposed Decision:

Page 1, the case no. is corrected to read as follows: "H-30308 LA".

The Decision suspends or revokes one or more real estate licenses on grounds of conviction of a crime and knowingly making a false statement of fact required to be revealed in an application for license.

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.

This Decision shall become effective at 12 o'clock noon on SEP - 8 2004.

IT IS SO ORDERED

August 16, 2004

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the matter of the Accusation of:	)	
	)	
	)	Case No. H-30808 LA
RENA H. LEI,	)	
	)	OAH Case No. L2003100108
	)	
Respondent.	)	

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on June 21, 2004, in Los Angeles, California.

Chris Leong, Counsel, represented complainant Maria Suarez.

Elizabeth Lou, Attorney at Law, represented respondent.

Complainant seeks to discipline respondent's real estate broker's license based on allegations that respondent suffered a criminal conviction which she failed to disclose in her renewal application for licensure. Respondent does not dispute the allegations, but maintains she made a mistake in failing to disclose the conviction and presents evidence in mitigation and rehabilitation.

Oral and documentary evidence was presented at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. a. Respondent holds real estate broker license number 01121216. She was first licensed by the Department of Real Estate ("Department") in 1995, as a salesperson. She obtained her broker's license in 1997 and renewed it in 2002. The license expires July 28, 2006.

b. The license has not been previously disciplined.

3. a. Respondent filed a renewal application on July 1, 2002. The application contained the following question, number 3: "Within the past four year period, have you been convicted of any violation of law? Convictions expunged under Penal Code section 1203.4 must be disclosed. However, you may omit minor traffic citations which do not constitute a misdemeanor or felony offense. If yes, complete items 22-23 on page 3."

b. Respondent answered "no" and wrote "none" in item 22, the portion of the application for providing details of the conviction.

4. Respondent's answer to question number 3 on the application is not true in that she failed to disclose the conviction set forth in factual finding number 6 below.

5. Respondent knew that the answer she provided to question number 3, as set forth in factual finding numbers 3 and 4, was not true. Respondent explained on direct examination that she did not reveal the conviction because of her belief that the matter had been dismissed after payment of the fine. The belief was based largely on conversations with her attorney. The attorney made all the court appearances on respondent's behalf pursuant to Penal Code section 977 and advised her that the case would be dismissed. On cross-examination, respondent further explained her failure to disclose the conviction on her feelings of shame and on her efforts to block the incident from her mind. Respondent's partially inconsistent statements indicate that she understood the question sought information about the conviction and that she believed the conviction to be a source of shame. Her belief that the conviction had been dismissed by payment of the fine was not reasonable, particularly since the application clearly sought disclosure of expunged convictions and since respondent was still on probation. Thus, the evidence establishes that respondent made a conscious decision not to disclose the conviction, which decision appears to have been based on feelings of shame.

6. On September 6, 2001, in the Superior Court, Beverly Hills District, County of Los Angeles, State of California, in case number 1BH01062, respondent was convicted, on her plea of nolo contendere, of violating Penal Code section 484(a) (petty theft). The court suspended imposition of sentence and placed respondent on summary probation for 1 year on terms and conditions that included service of 1 day in county jail, payment of \$345 in fines and fees, and payment of \$905 in restitution. Respondent received credit for time served awaiting criminal proceedings and did not have to serve any additional jail time.

7. The circumstances surrounding the conviction are as follows. On July 5, 2001, in preparation for a trip to her native Taiwan, respondent went to a Neiman Marcus retail store to purchase presents for her overseas family. Respondent bought approximately \$700 in gifts and was leaving when she noticed other items. She placed the items, a skirt and blouse valued at approximately \$165, on top of her bags intending to purchase them, but became distracted and stopped to eat some chocolate. She forgot about the extra items and attempted to leave the store without paying for the merchandise.

8. a. Respondent's conviction unfavorably reflects on her honesty and truthfulness, traits that the legislature and the courts have deemed desirable in real estate licensees. *See: Golde v. Fox* (1979) 98 Cal.App.3d 167. Accordingly, the conviction is for a crime involving moral turpitude and is substantially related to the qualifications, functions, and duties of a real estate salesperson.

b. Also, respondent's conviction is substantially related to the qualifications, functions, and duties of a real estate salesperson by reason of California Code of Regulations, title 10, section 2910, subdivision (a)(1), in that it involves the taking of the property of another.

9. The conviction is one of moral turpitude because it involves an unlawful act for financial gain. *Harrington v. Department of Real Estate* (1989) 214 CA3d 394.

10. The conviction is a material fact required to be revealed in the application because it can constitute grounds for denial of the license application.

11. The incident that led to the conviction occurred during a difficult time in respondent's life. She was becoming aware her husband's gambling addiction and its negative impact on family assets: personal jewelry was missing; bank funds were disappearing; and casino agents were calling about their money. As a result of her husband's mounting problems, and the family arguments they engendered, respondent became distraught, lost sleep, and was physically and emotionally drained. Her mental and physical condition contributed to two automobile accidents during the period.

12. Respondent complied with the terms and conditions of probation. On October 20, 2003, the Superior Court granted her petition pursuant to Penal Code section 1203.4 and set aside the conviction. Respondent has not suffered any other convictions.

13. Respondent is 58 years old. She obtained her education in Taiwan. She is engaged in the commercial and residential sales and management. Many of her clients live in or have continuing ties to Taiwan and her business requires regular visits to the island.

14. She appeared ashamed and remorseful about the conviction. Respondent has taken steps to gain control of her personal life and the underlying stressors, filing for bankruptcy protection in May 2003 and divorcing her husband in August 2003.

LEGAL CONCLUSIONS

1. Grounds exist to discipline respondent's license pursuant to Business and Professions Code section 490 in that she was convicted of a crime substantially related to the qualifications, functions, and duties of a real estate licensee, by reason of factual finding numbers 6, 7, and 8.

2. Grounds exist to discipline respondent's license pursuant to Business and Professions Code section 10177, subdivision (b), in that she was convicted of a crime involving moral turpitude, by reason of factual finding numbers 6, 7, and 9.

3. Grounds exist to discipline respondent's license pursuant to Business and Professions Code section 498 in that she secured the renewal license by knowingly omitting to state a material fact, by reason of factual finding numbers 3 through 10 and legal conclusion numbers 1 and 2.

4. Grounds exist to discipline respondent's license pursuant to Business and Professions Code section 10177, subdivision (a), in that she procured the renewal license by knowingly making a material misstatement of fact, by reason of factual finding numbers 3 through 10 and legal conclusion numbers 1 and 2.

5. All evidence presented in mitigation or rehabilitation, set forth in factual finding numbers 2b, and 11 through 14, has been considered. The conviction is an isolated event in an otherwise law-abiding life, which occurred during a time of turmoil and stress in respondent's life. She has taken substantial steps to rehabilitate herself. The failure to disclose the conviction raises concerns regarding her full rehabilitation, but, in the existing circumstances, even when coupled with the conviction, this single failure does not establish that respondent is a dishonest person. Nevertheless, the violations established require the order that follows for the protection of the public. The order will ensure a period of Departmental supervision to ensure respondent's continuing rehabilitation.

ORDER

All licenses and licensing rights of respondent Rena H. Lei under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application thereof and pays to the Department 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 two (2) years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which respondent engaged during the period covered by the report.

DATED: 7/19/04


SAMUEL B. REYES
Administrative Law Judge
Office of Administrative Hearings

Sacto Jay

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

FILE
FEB 4 2004
DEPARTMENT OF REAL ESTATE

By *Laura B. Deon*

In the Matter of the Accusation of

RENA H. LEI

} Case No. H-30308 LA

} OAH No. L-2003100108

Respondent

**CONTINUED
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 the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California on JUNE 21, 2004, at the hour of 9:00 a.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.

DEPARTMENT OF REAL ESTATE

Dated: February 4, 2004

By

Chris Leong

CHRIS LEONG, Counsel

cc: Rena H.Lei
Sacto.
OAH

*Sacto
file*

FILED
OCT 9 2003
DEPARTMENT OF REAL ESTATE

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

By *James B. Chong*

In the Matter of the Accusation of

RENA H. LEI

} Case No. H-30308 LA

} OAH No. L-2003100108

Respondent

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 the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California on **JANUARY 27, 2004**, at the hour of **10:00 a.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.

DEPARTMENT OF REAL ESTATE

Dated: October 9, 2003

By *CHRIS LEONG*

CHRIS LEONG, Counsel

cc: Rena H. Lei
Sacto.
OAH

4/10/03
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
SEP 11 2003
DEPARTMENT OF REAL ESTATE

By Laura B. Allen

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

NO. H- 30308 LA

12 RENA H. LEI,)

A C C U S A T I O N

13 Respondent.)

14 The Complainant, Maria Suarez, a Deputy Real Estate
15 Commissioner of the State of California, for cause of
16 Accusation against RENA H. LEI ("Respondent"), is informed and
17 alleges as follows:

18 I

19 Respondent is presently licensed and/or has license
20 rights under the Real Estate Law, Part 1 of Division 4 of the
21 Business and Professions Code ("Code"), as a real estate
22 broker. On or about July 1, 2002, Respondent submitted a
23 Broker Renewal Application to the Department of Real Estate to
24 apply to renew her real estate license.

25 ///

26 ///

II

1 In response to Question 3 of said renewal
2 application, to wit: "Within the past four year period, have
3 you been convicted of any violation of law? Convictions
4 expunged under Penal Code Section 1203.4 must be disclosed.
5 However, you may only omit minor traffic citations which do not
6 constitute a misdemeanor or felony offense", Respondent checked
7 the box "No". In response to Question 22 of said renewal
8 application, to wit: "Detailed Explanation of Item 3.
9 Complete one line for each violation and provide explanation
10 below", Respondent wrote "None".
11

III

12 On or about September 6, 2001, in the Municipal Court
13 of Beverly Hills Judicial District, County of Los Angeles,
14 State of California, Case No. 1BH01062, Respondent was
15 convicted of violating Section 484(a) of the California Penal
16 Code (Petty theft), a crime involving moral turpitude which is
17 substantially related under Section 2910, Title 10, Chapter 6,
18 California Code of Regulations, to the qualifications,
19 functions or duties of a real estate licensee.
20

IV

21 Respondent's criminal conviction, as alleged above,
22 is grounds for the suspension or revocation of all licenses
23 and/or license rights of Respondent under Code Sections 490 and
24 10177(b).
25
26
27

1 Respondent's failure to reveal the criminal
2 conviction, as alleged above, in said renewal application,
3 constitutes the procurement of a real estate license by fraud,
4 misrepresentation, deceit, or by making a material misstatement
5 of fact in said application, which failure to reveal is cause
6 under Code Sections 498 and 10177(a) for the suspension or
7 revocation of all licenses and/or license rights of Respondent
8 under the Real Estate Law.
9

10 WHEREFORE, Complainant prays that a hearing be
11 conducted on the allegations of this Accusation and that upon
12 proof thereof, a decision be rendered imposing disciplinary
13 action against all licenses and/or license rights of
14 Respondent, RENA H. LEI, under the Real Estate Law (Part 1 of
15 Division 4 of the Business and Professions Code), and for such
16 other and further relief as may be proper under other
17 applicable provisions of law.

18 Dated at Los Angeles, California
19 this 10th day of September, 2003.

20
21 
22 Deputy Real Estate Commissioner
23

24 cc: Rena H. Lei
25 Maria Suarez
26 Sacto.
27 EME