

FILED
JUN 23 2004
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-30394 LA
)	
)	L-2003110436
DIANE DORIOUS STONE,)
)	
)	
Respondent.)
_____)

DECISION

The Proposed Decision dated March 31, 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.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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 July 13, 2004.

IT IS SO ORDERED May 10, 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 Against:

DIANE DORIUS STONE,

Respondent.

Case No. H-30394 LA

OAH No. L2003110436

PROPOSED DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on March 9, 2004.

James R. Peel, Staff Counsel, represented Complainant Maria Suarez, Deputy Real Estate Commissioner.

Diane Dorius Stone (hereinafter "Respondent") was present at hearing and represented herself.

Oral and documentary evidence was received and the matter was submitted on March 9, 2004.

FACTUAL FINDINGS

1. Maria Suarez ("Complainant") made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate ("Department"), State of California.
2. The Department issued Respondent a real estate salesperson's license in or about 1984. Respondent is presently licensed and has licensing rights under the Real Estate Law. Respondent's real estate salesperson's license expires on May 29, 2006.
3. On May 11, 2001, in the Superior Court of the State of California, County of Riverside, Respondent was convicted on her guilty plea to one count of theft of retail merchandise, in violation of Penal Code section 490.5, a misdemeanor and a crime of moral turpitude that is substantially related to the qualifications, functions, and duties of a real estate salesperson. Respondent was placed on summary probation for a period of 36 months,

ordered to pay fines, fees, penalties, and restitution in the total amount of \$217.50, and ordered to stay 500 yards from, and not to enter Trader Joes.

4. The facts and circumstances surrounding Respondent's conviction are that on July 13, 2001, she was shopping in Trader Joes and knowingly left the store with a bottle of salad dressing in her purse. As she stepped outside of the store, authorities stopped her and cited her for shoplifting.

5. Respondent is 53 years old. She has been a real estate salesperson in the Palm Springs, California area since 1984. Respondent is currently employed as a real estate salesperson with Gregg Bradford McElwee, her sponsoring real estate broker.

6. Respondent's testimony at hearing appeared to be honest and forthright. She became very emotional when discussing the incident that lead to her conviction. Respondent admitted she left the store with the salad dressing in her purse, but stated that the bottle of salad dressing had mistakenly fallen into her purse which was sitting inside of her shopping cart. Respondent testified that when she got to the cashier to check out, she realized she did not have enough cash to pay for her groceries and that her checkbook was in her car in the parking lot. In a hurry and embarrassed by the entire incident, she took her purse and rushed out to her car to get her checkbook. Respondent deeply regrets the mistake she made and the disciplinary action that has followed.

7. Respondent volunteers with several drug rehabilitation programs to help people who are recovering addicts. She has raised money for the AIDS Foundation, and helps two elderly people in her community with their every day needs including shopping and medical appointments. Respondent is also an active member of the Desert Chapel Church. Respondent paid all of the fines, fees, restitution, and penalties ordered by the court and will complete her probation in August 2004.

8. Respondent's real estate salesperson's license has not been subject to any other disciplinary action and there is no evidence of any other criminal convictions.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's real estate salesperson's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), by reason of Findings 3 and 4.

2. There is sufficient evidence of rehabilitation to warrant issuing Respondent a restricted real estate salesperson's license pursuant to Title 10 of the California Code of Regulations, section 2912, the Department's Disciplinary Guidelines, by reason of Findings 6 through 8.

Title 10 of the California Code of Regulations, section 2912, contains the Department's Disciplinary Guidelines for rehabilitation criteria to be considered when

revoking or suspending a salesperson's license. Respondent has satisfied several of the Disciplinary Guidelines' criteria including: (1) it has been more than two years since her most recent criminal conviction; (2) she has paid the restitution and fines ordered by the court; (3) although she has not completed probation, her probation will expire in August 2004; (4) Respondent has significant involvement in her community and church as is shown by her volunteer work and the assistance she provides to the elderly in her community.

Respondent clearly regrets the unlawful conduct that lead to her conviction and takes full responsibility for her actions. There is no other evidence of discipline against Respondent's license or any other unlawful or inappropriate conduct.

On this record, there is sufficient evidence to conclude that Respondent has rehabilitated herself such that the public's health, safety and welfare would not be harmed if she was allowed to retain a properly restricted real estate salesperson's license.

ORDER

All licenses and licensing rights of Respondent Diane Dorius Stone under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson 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 two years have elapsed from the effective date of this Decision.
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 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 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.

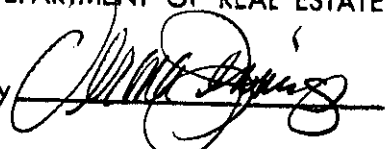
DATED: March 31, 2004


MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

Sacto.
day

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

FILED
DEC 17 2003
DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Accusation of

DIANE DARIUS STONE

Respondent

} Case No. H-30394 LA

} OAH No. L-2003110436

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 March 9, 2004**, 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.

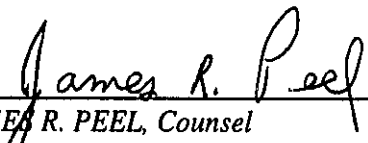
You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real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

DEPARTMENT OF REAL ESTATE

Dated: December 17, 2003

By


JAMES R. PEEL, Counsel

cc: Diane Darius Stone
Gregg B. McElwee
Sacto./OAH

3200
File

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

FILED
OCT 16 2003
DEPARTMENT OF REAL ESTATE

By 

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-30394 LA
12 DIANE DARIUS STONE,) ACCUSATION
13 Respondent.)
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15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against DIANE DARIUS STONE alleges as follows:

18 I

19 The Complainant, Maria Suarez, a Deputy Real Estate
20 Commissioner of the State of California, makes this Accusation in
21 her official capacity.

22 II

23 DIANE DARIUS STONE (hereinafter referred to as
24 "Respondent") is presently licensed and/or has license rights
25 under the Real Estate Law (Part 1 of Division 4 of the Business
26 and Professions Code, hereinafter referred to as the "Code").
27

1 III

2 At all times herein mentioned, Respondent was licensed
3 by the Department of Real Estate of the State of California as a
4 real estate salesperson.

5 IV

6 On or about August 14, 2001, in the Superior Court of
7 California, County of Riverside (Indio Branch), Respondent was
8 convicted of violating Penal Code Section 490.5 (Shoplifting), a
9 crime involving moral turpitude.

10 V

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

14 VI

15 Respondent's criminal conviction is cause under Code
16 Sections 490 and 10177(b) for suspension or revocation of all
17 licenses and license rights of Respondent under the Real Estate
18 Law.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondent
5 DIANE DARIUS STONE under the Real Estate Law (Part 1 of Division
6 4 of the Business and Professions Code) and for such other and
7 further relief as may be proper under other applicable provisions
8 of law.

9 Dated at Los Angeles, California,

10 this 30th day of September, 2003.

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13 
14 MARIA SUAREZ
15 Deputy Real Estate Commissioner
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23

24 cc: Diane Dorius Stone
25 Gregg Bradford McElwee
26 Maria Suarez
27 Sacto.
CW