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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
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In the Matter of the Accusation of)	No. H-30501 LA
)	
)	L-2004010039
)	
YUKIKO HARUTA MILLER,)	
)	
)	
Respondent.)	

DECISION

The Proposed Decision dated July 23, 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.

This Decision shall become effective at 12 o'clock noon on August 27, 2004.

IT IS SO ORDERED August 27, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

**DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

YUKIKO HARUTA MILLER,

Respondent.

Case No. H-30501 LA

OAH No. L2004010039

PROPOSED DECISION

The above-captioned matter was heard on June 8, 2004, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, presided. Complainant was represented by Mr. James R. Peel, Staff Counsel, Department of Real Estate. Respondent appeared with her lay representative, Mr. Charles Benninghoff.

Evidence was received and the case argued, but the record was held open until June 25, 2004, so that Respondent could submit another exhibit. That document, a copy of a court order granting relief pursuant to Penal Code section 1203.4, was timely received, and is received in evidence as Exhibit "J". The matter was deemed submitted June 25, 2004.

The Administrative Law Judge hereby makes his findings of fact, conclusions of law, and order, as follows:

FINDINGS OF FACT

1. Complainant Maria Suarez filed the accusation in the above-captioned proceeding while acting in her capacity as a Deputy Real Estate Commissioner in the Department of Real Estate ("the Department"), State of California.
2. Respondent Yukiko Haruta Miller is currently licensed as a real estate salesperson by the Department. Her license, number 0093679, is current. She was first licensed in approximately 1985.¹ Respondent's license will expire on August 8, 2006, unless renewed.
3. On January 29, 2002, Respondent was convicted of violating Penal Code section 484, subdivision (a)—488, petty theft. Her conviction entered in the Superior Court of

¹ The license certification does not state the initial date of licensure, but Respondent testified that she has been licensed 19 years.

California, County of Orange, in the case *People v. Yukiko Haruta Fahland*, case number 02HM00240 MA. The conviction followed Respondent's plea of guilty, and she was thereby convicted of a misdemeanor. She was then four days from her sixty-third birthday.²

4. The court suspended the imposition of sentence and placed Respondent on summary probation for one year. As conditions of probation, Respondent was ordered to perform twenty hours of community service, to obey all laws, and to stay away from Loehman's stores. She was ordered to pay a fine to the restitution fund, but was not ordered to pay restitution to the retailer in question.

5. The facts and circumstances of the crime are that Respondent went to a Loehman's clothing store on December 27, 2001, and took an article of clothing from that store. She did so as an angry response to the refusal of the store's staff to allow Respondent to return another item of clothing that Respondent had previously purchased at the store. Respondent was also offended because she perceived that the staff at the store had been laughing at her when she had spoken to them about returning the one item; Respondent thought they were making fun of her because she speaks with an accent. Respondent had tried to return the previously-purchased item because she found, upon taking it home, that it had been altered. The store's staff claimed she had altered the clothing, when she had not, and hence refused the return, and Respondent decided to engage in some self-help.

6. Respondent's conviction is for a crime of moral turpitude, per se, substantially related to the duties, qualifications, and functions of a real estate licensee.

7. Respondent has performed all the conditions of her probation and completed her probation on time. This includes the performance of her community service obligation and payment of her fine of \$100.00. On June 17, 2004, the Superior Court granted her petition for relief pursuant to Penal Code section 1203.4, thereby setting aside her plea and dismissing the action.

8. Respondent has never suffered any other convictions, and has no prior license discipline. There is no evidence that even a complaint has been filed against her in the course of her professional activities.

9. Several witnesses testified on Respondent's behalf, including her two sons-in-law, and her former partner from a real estate firm, who had worked with her on a daily basis for many years. All credibly attested to her honesty, integrity, work-ethic, and all had personally observed her sense of shame and her remorse when she finally told them of her conviction. The testimony of these witnesses, whose demeanor throughout was calm and forthright, was augmented by written attestations to Respondent's good character, made by others who have known her and worked with her for a significant period of time. Respondent's character witnesses expressed their belief that her one criminal act was an aberrant one, totally out of character for her.

² The caption from the criminal complaint shows her date of birth as February 2, 1939.

10. Respondent testified on her own behalf, and she was also credible in her demeanor while testifying. She acknowledged that her act was not justified by any poor conduct by the staff at the store in question, admitting from the witness stand that she "did petty theft; I have no excuse for it." Her remorse was evident from her speech and manner during the hearing, as was her truthfulness when testifying. She established that she has a stable family life, showing that she is married and has raised two children to adulthood, and that she has a strong relationship with her daughters and their husbands. She also established that she has been active in her religion for many years and that she contributes to her church; that testimony was corroborated with documentation. She does not use alcohol or drugs. She has always kept up with her continuing education obligations, and has taken many more hours than required since her conviction.

11. Based on all the facts and circumstances, it is found that Respondent's commission of petty theft was an aberrant act, unlikely to be repeated in the future.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter pursuant to section 10175 of the Business and Professions Code (hereafter "the Code"), based on Factual Findings 1 and 2.

2. The Respondent has been convicted of a crime of moral turpitude per se, based on Factual Findings 3 through 6, and *In Re Rothrock*, (1944) 25 Cal. 2d. 588.

3. In all the facts and circumstances, the conviction is substantially related to the duties, qualifications, and functions of a real estate licensee, pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8)³, based on Factual Findings 3 through 6.

4. Based on Factual Findings 1 through 6 and Legal Conclusions 1 through 3, cause has been established to discipline the real estate salesperson's license held by Respondent.

5. There are mitigating circumstances, based on Factual Findings 5, 8, 9, and 11.

6. Respondent has established her rehabilitation, based on Factual Findings 5 through 11, and CCR section 2912, in that:

(A) More than two and one half years have passed since Respondent's conviction, and she therefore meets the criterion set forth in CCR section 2912, subdivision (a), based on Factual Finding 3;

³ All further citations to the regulations shall be to title 10, and cited as "CCR."

(B) Her conviction has been expunged, satisfying the criterion of CCR section 2912, subdivision (c), based on Factual Finding 7;

(C) She has completed her probationary term, satisfying the criterion set forth in CCR section 2912, subdivision (e), based on Factual Finding 7;

(D) She has paid all fines, costs, and penalties, satisfying the criterion of CCR section 2912, subdivision (g), based on Factual Finding 7;

(E) She has demonstrated a stable family life subsequent to her convictions, in satisfaction of CCR section 2912, subdivision (j), based on Factual Findings 9 and 10;

(F) She has shown sustained enrollment in professional education, in satisfaction of the requirements CCR in section 2912, subdivision (k), based on Factual Finding 10;

(G) She has proven significant and conscientious involvement in her church, therefore satisfying the criterion of CCR section 2912, subdivision (l), based on Factual Finding 10;

(H) She has shown a change of attitude from the time she committed her crime, acknowledging that she had no excuse for her action, and that it was not justified by any conduct by the retailer's staff. The evidence of her attitude was established by her own testimony as well as from family, friends, and others familiar with her conduct before and after the crime. She has therefore met the criterion set out in section 2912, subdivision (m), based on Factual Findings 9 and 10.

(I) Based on the particular facts of this case, the criterion set out in section 2912, subdivisions (b), (d), (f), (h), and (i) are not applicable. She was not required to make restitution nor to register pursuant to Penal Code section 290 (§ 2912, subd. (b); subd. (d)), and business practices had nothing to do with the crime. (*Id.*, subd. (h).) Alcohol and drugs did not contribute to the commission of the petty theft (*Id.*, subd. (f)), and her social relationships were not a contributing factor in the crime, and instead appear a source of stability and strength.

7. The purpose of these proceedings is to protect the public, and not to punish a licensee who has previously transgressed the law; punishment is left to the courts. (*E.g.*, *Camacho v. Youde* (1979) 95 Cal. App.3d 161, 164.) Respondent having demonstrated her rehabilitation, no disciplinary order need be made to protect the public, and this matter should be dismissed. (*Cf.* Bus. & Prof. Code, § 480, subd. (b).) To do otherwise would have a punitive effect, and no punishment is needed to deter further misconduct on Respondent's part, and such punishment is not authorized by law.

Discussion and Rationale:⁴

Plainly a conviction for petty theft calls into question a real estate licensee's fitness to engage in licensed activities. Licensees are not only fiduciaries, they have ready access to unoccupied homes and are placed in a position to steal items of property large and small. Notwithstanding this axiom, and notwithstanding Respondent's commission of an act of petty theft, she has demonstrated such rehabilitation that no further disciplinary action is necessary.

The entire weight of the record supports the finding that this was an aberrant act by a 62-year old licensee who has never had trouble with the law or the Commissioner before or since the event in question. The nature of the Superior Court's sentence speaks to the nature of the act; she was placed on probation for only one year, a rather lenient sentence. Numerous persons from Respondent's personal and professional life provided evidence to support the finding of an otherwise unblemished record; it was not necessary to rely on Respondent's credible testimony to come to that conclusion. It should be noted that Respondent's testimony as to why she took the clothing went unrefuted; not even a police report was available to controvert that testimony. To be clear, this is not a finding that Respondent's act was justified or is excused hereby, and it is important to note that she herself did not attempt to excuse her misconduct. However, her version of events supports the finding that her crime was an impulsive and aberrant act quite unlikely to be repeated in Respondent's lifetime. And, the shame and sorrow that she exhibited to the undersigned and to others is further assurance that she is unlikely to break the law again.

As set forth above, Respondent has satisfied every rehabilitation criterion that can apply to her case. Her short probation fully completed and her conviction expunged, she has continued in a law-abiding lifestyle without any complaints about her professional activities. Instead, she has retained the support of her family, her supervising broker, and other professionals she knows. Given her rehabilitation, and given isolated nature of her crime, imposition of discipline would serve no legitimate purpose in this particular case.

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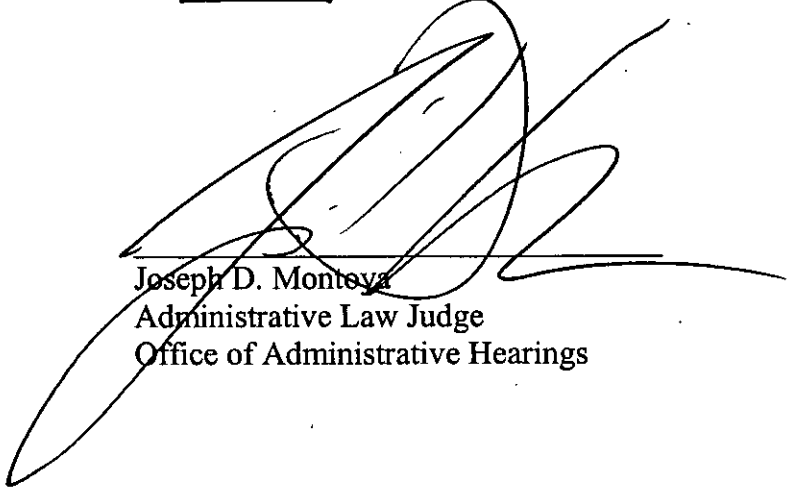
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⁴ The section that follows is within the ambit of Government Code section 11425.50, subdivision (d), and meant to provide a discussion of legal issues raised as well as key evidence, and a rationale for the findings, conclusions, and proposed order. So far as stated, it is intended to augment credibility findings. However, the evidence and authorities referenced are not necessarily the only ones relied on in reaching the decision.

ORDER

The accusation against Yukiko Haruta Miller is sustained, but no disciplinary order is to be imposed hereby.

July 23, 2004



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

Sacto. Flag

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APR 20 2004

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
[Signature]

In the Matter of the Accusation of

YUKIKO HARUTA MILLER

Respondent

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}

Case No. H-30501 LA

OAH No. L-2004010039

**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 Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on June 8, 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

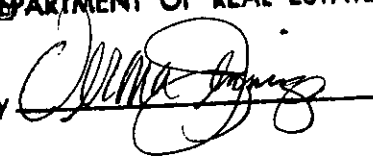
Dated: April 20, 2004

By *James R. Peel*
JAMES R. PEEL, Counsel

Yukiko Haruta Miller
Charles Benninghoff
Valentina Rector/Sacto./OAH

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

By 

In the Matter of the Accusation of

YUKIKO HARUTA MILLER

Respondent

}

Case No. H-30501 LA

OAH No. L-2004010039

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 4, 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.

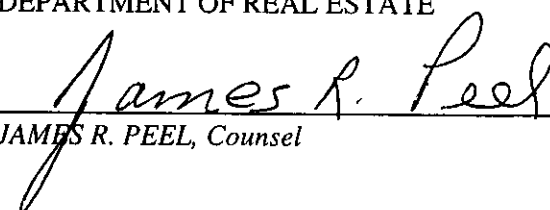
You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented 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.

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DEPARTMENT OF REAL ESTATE

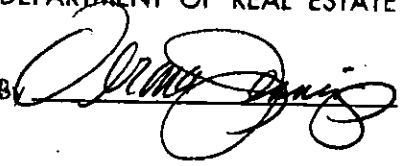
Dated: February 13, 2004

By 
JAMES R. PEEL, Counsel

cc: Yukiko Haruta Miller
Charles Benninghoff, Rep.
Valentina Rector/Sacto./OAH

SACTO,
Rag

1 JAMES R. PEEL, Counsel (SBN 47055)
Department of Real Estate
2 320 West Fourth Street, Ste. 350
Los Angeles, California 90013-1105
3
4 Telephone: (213) 576-6982
-or- (213) 576-6913 (Direct)

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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-30501 LA
12 YUKIKO HARUTA MILLER,) 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 YUKIKO HARUTA MILLER 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 YUKIKO HARUTA MILLER (hereinafter referred to as
24 Respondent) is presently licensed and/or has license rights under
25 the Real Estate Law (Part 1 of Division 4 of the Business and
26 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
4 ("Department") as a real estate salesperson.

5 IV

6 On or about January 29, 2002, in the Superior Court of
7 California, County of Orange, State of California, Respondent was
8 convicted of violating Penal Code Section 484(a) (petty theft), 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
16 Sections 490 and 10177(b) of the Code for suspension or
17 revocation of all licenses and license rights of Respondent under
18 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 upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the licenses and license rights of Respondent
5 YUKIKO HARUTA MILLER under the Real Estate Law (Part 1 of
6 Division 4 of the Business and Professions Code) and for such
7 other and further relief as may be proper under other applicable
8 provisions of law.

9 Dated at Los Angeles, California,
10 this 31ST day of October, 2003.

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12 
13 MARIA SUAREZ
14 Deputy Real Estate Commissioner
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24 cc: Yukiko Haruta Miller
25 Valentina Rector
26 Maria Suarez
27 Sacto.
EME