

FILED
JAN 21 2005

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By 

* * * * *

In the Matter of the Application of)
BOBBIE H. UERKVITZ,
Respondent.

No. H-31190 LA

L-2004090364

DECISION

The Proposed Decision dated December 20, 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.

Condition #4 and #5 of the Order of the Proposed Decision is not adopted and shall not be a part of the Decision.

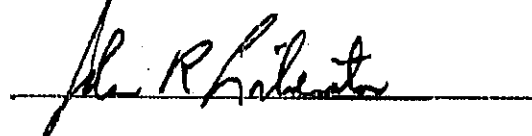
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock
noon on February 10, 2005.

IT IS SO ORDERED: January 21, 2005

JEFF DAVI
Real Estate Commissioner

A handwritten signature in dark ink, appearing to read "John R. Liberator", is written over a horizontal line.

BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

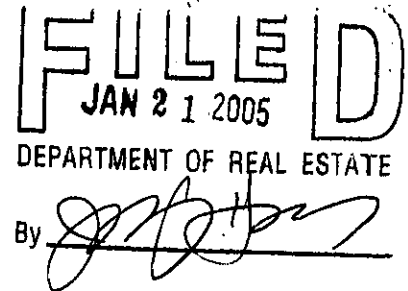
In the Matter of the Statement of Issues
Against:

BOBBIE H. UERKVITZ,

Respondent

Case No. H-31190 LA

OAH No. L2004090364



PROPOSED DECISION

Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on November 19, 2004, at Los Angeles, California.

Kelvin K. Lee, Staff Counsel, represented Complainant.

Donna L. Ortlieb, Attorney at Law, represented Respondent.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Proposed Decision.

* * * * *

FINDINGS OF FACT

1. Maria Suarez made the Statement of Issues in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent Bobbie H. Uerkvitz (Respondent) filed her application, dated February 9, 2004, with the Department of Real Estate (Department) for licensure as a real estate salesperson. The application was denied and this hearing ensued.

3. On June 9, 2003, in the Superior Court of the State of California, County of Los Angeles, Respondent was convicted on her plea of guilty to one count of violating Penal Code section 484, subdivision (a), petty theft (shoplifting), a crime of moral turpitude which is substantially related to the functions, duties and qualifications of a Department licensee.

Imposition of sentence was suspended and Respondent was placed on summary probation for a period of three years on condition she pay fines and restitution in the total amount of \$421. Respondent paid this amount the same day she was convicted. No community service or other penalty was imposed. She had shoplifted \$75 worth of miscellaneous items, including shampoo, toothpaste and skin cream from a local supermarket.

4. Respondent was, and remains, profoundly embarrassed by her criminal conduct. She had no real explanation for why she did what she did, other than she had an extremely stressful home life. Respondent's family (sister and sister's two children) had moved into Respondent's house for an extended period of time. This created a lot of tension between Respondent and her husband, as well as between Respondent and her sister. On the day she committed the crime, Respondent had had a very emotional discussion with her husband where it was finally decided Respondent had to ask her family to move. Respondent was understandably upset, nervous and confused, not the least reason being she had no idea whether this would cause irreparable damage to her relationship with her family.

5. There is no rational nexus between strife at home and shoplifting, unless of course the strife is caused by financial problems. That is not the case here. Thus, Respondent's criminal conduct is all the more puzzling, as it cannot be explained objectively. Clearly, Respondent, who has no other criminal history, who is very bright, articulate, and otherwise presents as law-abiding, does not understand her own conduct. She is, however, certain it will not recur.

6. Respondent made a very favorable impression while testifying.¹ She did not try to minimize or rationalize her conduct, although she was obviously ashamed by it. She was very respectful of the Department and this administrative process. The Superior Court was also impressed by Respondent's behavior, as on September 22, 2004, with Respondent due to remain on probation for almost two more years, it issued an order under the provisions of Penal Code 1203.4 expunging the conviction.

7. Respondent has corrected the problems she had at home. Her sister now lives in her own apartment, but the two remain very close. She has learned to discuss family problems openly, so if there is disharmony, it will not "boil over" into aberrant behavior. Respondent is well-educated. She has a Bachelor's degree in newspaper administration. She is very active in her church. She acted as "homestead coordinator" for two years, finding housing for children, as well as counseling them. She also is active with the local animal shelter in rescuing stray dogs. Respondent, who has been married for twenty years and has three adult children, including adopted twins, has a very stable home life now. Her arrest and conviction have had an in terrorem effect on her, and it is unlikely she will re-offend.

* * * * *

¹ Even counsel for Complainant suggested issuance of a restricted license would be appropriate in this case.

CONCLUSIONS OF LAW

1. Respondent's conviction, set forth in Finding 3, is ground for denial of her application under the provisions of Business and Professions Code sections 475, subdivision (a)(2), 480, subdivision (a)(1), and 10177, subdivision (b), severally.

2. The Department has promulgated regulations, as set forth in California Code of Regulations, title 10, section 2911, for the purpose of evaluating the rehabilitation of an applicant for issuance of a license. Respondent has met each criterion, save one, applicable to her. Taking the criteria in the order set forth in the regulation, the evidence shows the following (the parenthetical letters refer to the specific subdivision of section 2911 which are applicable to Respondent):

(a) Passage of not less than two years since the most recent conviction: Respondent has not fully met this criterion, as her conviction occurred 18 months ago (Finding 3.)

(b) Restitution: Respondent made restitution (Finding 3.)

(c) Expungement of conviction: The conviction has been expunged (Finding 6.)

(e) Early termination of probation: Respondent's three year probation was terminated after 15 months (Findings 3 and 6.)

(g) Payment of fines: Respondent paid her fine the same day she was convicted (Finding 3.)

(h) Stability of family life and fulfillment of parental duties: Respondent has a stable family life, having been married for 20 years, raising three children, and remaining close with her sister (Finding 7.)

(l) Significant involvement in community/church programs: Respondent volunteers as a church counselor, as well as an aide to the local animal shelter (Finding 7.)

3. Although Respondent has not fully complied with the two year requirement noted in subsection (a), by the time of the effective date of the below order, this provision will have been substantially met.

4. In light of evidence of significant rehabilitation, the public interest would not be adversely affected by issuance of a real estate salesperson's license to Respondent, provided it is conditioned as set forth below.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's application 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. The restricted license issued to the 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 said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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 this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

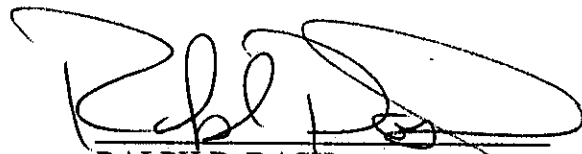
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. 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 timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.~~

5. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

Date: 12-20-04


RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

5/2/02

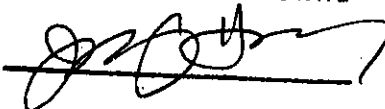
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-31190 LA
)
BOBBIE H. UERKVITZ,) OAH No. L-2004090364
)
_____) Respondent

FILED
SEP 27 2004
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON APPLICATION

To the above-named Respondent(s):

By 

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, CA 90013-1105 on FRIDAY, NOVEMBER 19, 2004, at the hour of 1:30 P.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 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: September 27, 2004

By


KELVIN K. LEE, Counsel

cc: Bobbie H. Uerkvitz
Donna L. Oerliwv, Esq.
Sacto.
OAH

RE 500 (Rev. 8/97)

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KELVIN K. LEE, Real Estate Counsel (SBN 152867)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-6905

FILED
AUG 18 2004
DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of) NO. H- 31190 LA
)
BOBBIE H. UERKVITZ,) STATEMENT OF ISSUES
)
Respondent.)

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Statement
of Issues against BOBBIE H. UERKVITZ ("Respondent"), is informed
and alleges as follows:

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The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, makes this Statement
of Issues against Respondent in her official capacity.

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II

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about February 11, 2004.

III

(CRIMINAL CONVICTIONS)

On or about June 9, 2003, in the Superior Court of Los Angeles County, State of California, in Case No. 3JMO3432 Respondent BOBBIE H. UERKVITZ, was convicted of one (1) count of violating California Penal Code Section 484, subdivision (a), (Theft of Property). This is a crime involving moral turpitude which is substantially related under Title 10, Chapter 6, Section 2910, subdivisions (a)(1), (a)(4) and (a)(8), California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, as alleged herein above in Paragraph III, constitutes cause for denial of Respondent's application for a real estate license under Code Sections 475(a)(2), 480(a)(1) and/or 10177(b).

The Statement of Issues is brought under the provisions of Section 10100, Division 4 of the Business and Profession Code of the State of California and Sections 11500 through 11528 of the Government Code.

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1 WHEREFORE, Complainant prays that the above entitled
2 matter be set for hearing and, upon proof of the charges
3 contained herein, that the Commissioner refuse to authorize the
4 issuance of, and deny the issuance of, a real estate salesperson
5 license to Respondent, BOBBIE H. UERKVITZ, and for such other
6 and further relief as may be proper under other provisions of
7 law.

8 Dated at Los Angeles, California

9 this 10th day of August, 2004.

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11 
12 Maria Suarez
13 Deputy Real Estate Commissioner

14 cc: BOBBIE H. UERKVITZ
15 Maria Suarez
16 Sacto.
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