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OCT 24 2005

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By

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In the Matter of the Application of)

No. H-31924 LA

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L-2005070724

MICHELE LOUISE BURNETT,

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Respondent.

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DECISION

The Proposed Decision dated September 21, 2005, 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.

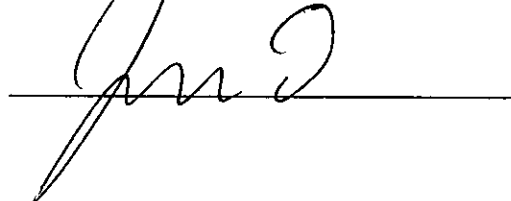
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a 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 November 14, 2005.

IT IS SO ORDERED

JEFF DAVIS  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

MICHELE LOUISE BURNETT,

Respondent.

File No. H – 31924 LA  
OAH No. L 2005070724

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 24, 2005.

Alvaro Mejia, Counsel, represented Complainant Maria Suarez, a Deputy Real Estate Commissioner in the Department of Real Estate of the State of California (Department).

Respondent Michele Louise Burnett was present in court and represented herself.

Following the receipt of oral and documentary evidence and argument, the case was submitted on August 24, 2005.

FACTUAL FINDINGS

1. Complainant Maria Suarez, a Deputy Commissioner in the Department, filed the Statement of Issues in this matter in her official capacity.

2. Respondent Michele Louise Burnett (Respondent) made application to the Department for a real estate salesperson license on or about July 30, 2004. In that application she declined to answer Questions 25, 26, and 27 concerning whether she had been convicted of a crime and whether any criminal charges were pending against

her. She actually wrote "Declined to State" on her application. In an accompanying statement, she asserted that she should not be required to make such a disclosure as convictions are a matter of public record and the agency should do its own search to determine if such acts had occurred. She also felt that the Department was using coercion in trying to make her to respond. Respondent remained adamant in her position on this during the hearing in this matter, although she freely provided the details of the conviction in her testimony. She felt that she was honest and truthful in not answering and was not trying to hide anything.

3. On or about June 1, 1992, in the Superior Court in Los Angeles County (Long Beach), State of California, in case number NA011452-01, Respondent was convicted of violating California Welfare and Institutions Code section 10980, subdivision (c) (2), welfare fraud, a felony, and Penal Code section 118, perjury, a felony. These are crimes involving moral turpitude and are substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910.

4. At the hearing, Respondent gave the following details of her conviction. In 1992, Respondent was divorced and left with 3 children in need of care. Their ages were 16, 9, and 4 years. She applied for and received welfare. After a period of time she got a job and reported that fact to her welfare worker. Because the amount of money earned was not sufficient, Respondent would have continued to receive some welfare payments after an adjustment. The welfare worker told her this would be a wash after a lot of paperwork and instructed Respondent to just say she was not working as a matter of convenience. Irrespective of the welfare workers advice, Respondent was charged with receiving illegal welfare support. She takes full responsibility for this. She was represented by the Public Defender who told her to plead no contest because she had no proof of what she had been told. Respondent was ordered to repay \$5,000 to the county. She did this over the next 36 months. She satisfied all other terms and conditions of the courts order. Upon repayment of the amount, Respondent states that the court told her that the felonies would be reduced to misdemeanors. There is no remaining court record of Respondent's criminal case. The only proof of the conviction is the case summary obtained from the California Department of Justice which does not disclose any subsequent actions by trial courts following completion of the sentence. Such a reduction to misdemeanors is often or commonly done by courts in such situations however. Respondent's assertion that her convictions were reduced to misdemeanors is accepted.

5. Respondent has no other criminal convictions and has not been on welfare since 1992. She states she has learned from what happened then and will never do that again.

6. Respondent is legally blind. This condition has developed gradually over the years.

7. Respondent has attended California State University Long Beach for 5 years and has earned 120 credits. She needs 12 more to obtain a degree. She is not currently enrolled.

8. Respondent has volunteered work at the Braille Institute and other non-profit organizations for the past five years. She is the president of the Greater Long Beach Council of the Blind and was Secretary of that organization before assuming the presidency.

9. Respondent wants the salesperson license because she has a friend who obtained a salesperson license and is able to support herself. Respondent would like to do the same.

10. Respondent by declining to state whether she had been convicted of a crime on her license application put the Department on notice of a problem with regard to the possibility that a criminal conviction existed. Given this notice, it was necessary for the Department to look into her background on this issue.

### LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application to the Department for a real estate salesperson license in that her failure to reveal her conviction in her license application constitutes knowingly making a false statement of a material fact required to be revealed and is grounds for denial under Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a). Respondent fails to recognize that the Department, as a part of its licensing process, has a right to ask for such information, both to test the veracity of the applicant and as a part of its determination that the public will not be harmed by a license being granted. Respondent is not required to seek a license nor is the Department required to issue one. If Respondent wants to successfully obtain a license, she is required to provide the information requested.

2. Cause exists to deny Respondent's application to the Department for a real estate salesperson license, pursuant to Business and Professions Code sections 475, subdivision (a) (2), 480, subdivision (a) (1) and 10177, subdivision (b) in that she has been convicted as set forth in Paragraphs 3 and 4 of the Factual Findings.

3. It has been 13 years since Respondent's conviction. All terms and conditions of the court's order have been met by Respondent. The charges in the conviction are deemed to have been reduced to misdemeanors. She has no other criminal convictions. Respondent has raised a family of three on her own. She has attended college and nearly has enough credits to graduate. She has been active as a volunteer with the Braille Institute and other nonprofit groups for the past five years. She is president of the Greater Long Beach Council of the Blind. Respondent has substantially met the Department's requirements for rehabilitation set forth in

California Code of Regulations, title 10, section 2911. Had Respondent answered the questions on her application regarding whether she had been convicted of a crime there would be little doubt about granting her the requested license. However, her failure to do so is a serious problem. Respondent is wrong in her contention that she is not required to disclose her prior conviction. However, by giving the answer that she did ["Decline to State"], she put the Department on notice of a problem and the necessity to look into her background. When the conviction was found and called to Respondent's attention she did acknowledge it and provided details concerning what had happened. Under these circumstances, i.e. the fact that the conviction occurred so long ago, Respondent has had no other convictions, has the accomplishments noted above, and her response to the questions not answered did not result in a license being issued make the issuance of a restricted license an appropriate course of action.

#### ORDER

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:

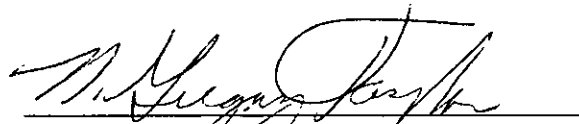
(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(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 a course in real estate practices and one 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.

DATED: September 21, 2005.

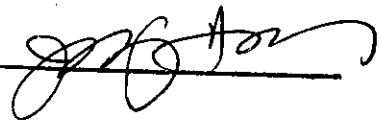
  
N. GREGORY TAYLOR  
Administrative Law Judge  
Office of Administrative Hearings

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**FILED**  
MAY 19 2005

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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|-------------------------------------|---|----------------------------|
| In the Matter of the Application of | ) | NO. H-31924 LA             |
|                                     | ) |                            |
| MICHELE LOUISE BURNETT,             | ) |                            |
|                                     | ) | <u>STATEMENT OF ISSUES</u> |
|                                     | ) |                            |
| Respondent.                         | ) |                            |

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Statement of Issues against MICHELE LOUISE BURNETT, aka Michele Burnett ("Respondent"), is informed and alleges as follows:

1.

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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2.

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about July 30, 2004, with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Business and Professions Code ("Code") Section 10153.4.

3.

(CRIMINAL CONVICTION)

On or about June 1, 1992, Respondent was convicted of violating California Welfare and Institutions Code Section 10980(c)(2) (Welfare Fraud), a felony, and convicted of violating California Penal Code Section 118 (Perjury) a felony. These are crimes involving moral turpitude, which are substantially related under Title 10, Chapter 6, Section 2910, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

4.

(FAILURE TO REVEAL CONVICTION)

In response to Question 25 of his license application, to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTION 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". Respondent failed to reveal the conviction described in Paragraph 3 above.

Respondent's failure to reveal the conviction set forth herein in Paragraph 3, above, in her license application, constitutes, knowingly making a false statement of material fact required to be revealed in said application, which is grounds for denial of the issuance of a license under Business and Professions Code Sections 480(c) and 10177(a).

5.

The crimes of which Respondent was convicted, as alleged herein above in Paragraph 3, constitutes cause for denial of Respondent's application for a real estate license under Business and Professions 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 Professions Code of the State of California and Sections 11500 and 11529 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, MICHELE LOUISE BURNETT, and for such  
6 other and further relief as may be proper under other provisions  
7 of law.

8 Dated at Los Angeles, California

9 this 16th day of May, 2005.

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11   
12 Maria Suarez  
13 Deputy Real Estate Commissioner

14 Cc: MICHELE LOUISE BURNETT  
15 Maria Suarez  
16 Sacto.  
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