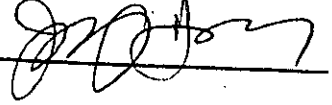


FILED
OCT 19 2005

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By 

* * * * *

In the Matter of the Application of)
)
RACHELLE LEE CEBALLOS,)
)
Respondent.)
_____)

No. H-31946 LA
L-2005060316

DECISION

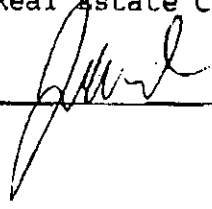
The Proposed Decision dated September 15, 2005, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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 8, 2005.

IT IS SO ORDERED 10-17-05

JEFF DAVI
Real Estate Commissioner


BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

RACHELLE LEE CEBALLOS,

Respondent.

Case No. H-31946 LA

OAH No. L2005060316

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on August 22, 2005.

Alvaro Mejia, Staff Counsel, represented the Complainant.

Respondent appeared in person and was represented by Frank Buda, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

1. The Complainant, Janice Waddell, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in her official capacity.
2. Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about June 28, 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 section 10153.4.
3. In early 1997, Respondent, acting as a care-giver for an elderly man (victim), befriended him. She kept house for the victim, took him to medical appointments, assisted him in his exercises and did some gardening. On occasion they would have lunch together, away from the residence, and she would assist him in his banking. He trusted Respondent

and give her his ATM card pin number to do some of the banking for him. While in that position of trust, Respondent, on a number of occasions used the ATM card and pin number for her personal use. By so doing she stole \$2000 from the victim's account. Ultimately, a criminal case was filed against her. Thereafter, on January 7, 2002, in the Superior Court of California, Northeast District Department, County of Los Angeles, in case number GA045919, Respondent was convicted of violating two counts of Penal Code sections 368(c) (Willfully Cause Injury to Elder), felonies. This is a crime involving moral turpitude.

4. Respondent's conduct set forth in Finding 3 constitutes the appropriating of funds belonging to another person; the employment of fraud and deceit to achieve an end; the doing of an unlawful act of conferring a financial benefit upon the perpetrator.

5. As a result of the conviction Respondent was placed on three years probation effective January 7, 2002; ordered to pay restitution; ordered to pay fines; and ordered to perform 200 hours community service. She has paid full restitution in the amount of \$6,500; paid all fines; completed the community service requirement performing work for the Wildlife Way Station. She reported, as instructed, on a monthly basis to her probation officer. While on criminal probation she was promoted to an administrative assistant by her employer at the Sherman Oaks Galleria. Her then employer was aware of the conviction.

As a result of Respondent's compliance with probation and the payment of all monetary conditions, Respondent was granted early termination of probation; the felonies were reduced to misdemeanors; and the conviction was expunged.

6. At the time of the crime Respondent was 21 years old and – in attempts to provide for her education – in financial duress. Those circumstances did not excuse the victimization of an elderly man but do mitigate same.

7. At present, Respondent provides care to her mother who recently suffered a stroke and has a close, loving relationship with her mother. She is engaged to be married. Her prospective husband, a member of the State Bar, has a close and loving relationship with Respondent. Respondent has achieved stability of family life and fulfillment of parental and familial responsibilities.

8. Subsequent to the criminal conduct Respondent has completed formal education and other training for economic self-improvement. In particular, she has completed the courses necessary for licensure as a real estate agent and has passed the California Real Estate Examination for such licensure. She did graduate from Pasadena City College with an Associate of Arts Degree and thereafter did finish all course work at California State University at Northridge (CSUN) and was awarded a Bachelor's Degree on June 1, 2001. Her cumulative grade point average was 3.02 out of a possible 4.00.

9. Respondent has in recent years engaged in works of public good. She has, during the yule season, collected food and other items of sustenance, and distributed same to the

homeless. She has worked, from time to time, as a volunteer at the Homeless Shelter for Woman. She is a member of, and does attend, the First Christian Church of North Hollywood. She, therefore, has participated in and engaged in activities designed to provide social benefits or to ameliorate social problems.

10. In recent years Respondent has worked in positions of trust. From June, 2001 to October, 2004 Respondent worked as a receptionist and leasing assistant for Douglas Emmett and Co. From October, 2004 to the present she has worked with Traina Real Estate Services as a leasing assistant. She, therefore, has been continuously employed since 2001 as a trusted employee and, while is employed, has work with honesty, diligence and trustworthiness. By reason of that employment, and by reason of her matriculation at CSUN, she has new and different social and business relationships from those which existed at the time of the conduct set forth in Finding 3.

11. Respondent was transparent in the Department's application and interview process; that is she provided full disclosure to the Department. She has provided full disclosure to her employer and to her fiancée. Respondent was open and honest in her testimony and has been, and is now, contrite about her criminal conduct. Her feelings of remorse are real as is her profound sympathy for the elderly victim. Respondent has established a change in attitude from that which existed at the time of the conduct set forth in Finding 3. That change was established by the credible testimony of Respondent and the credible testimony of her fiancée. That testimony was supported by character letters from Douglas Emmett & Co. and by her sponsoring broker at Century 21 All Mover. The totality of the evidence did demonstrate that Respondent, presently, possesses the character traits of honesty, integrity, perseverance and self-discipline.

12. The crime occurred some years ago and two years ago Respondent was granted early termination of probation. Respondent, by her diligent efforts toward self-improvement, did establish a record of clear and convincing rehabilitation as is required by California Code of Regulations, title 10, section 2911. Respondent is presently of good character. Accordingly, licensure of Respondent on a restricted status is consistent with the public interest.

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of section 10100, Division 4 of the Business and Professions Code of the State of California and sections 11500 through 11528 of the Government Code.

2. The crime set forth in Finding 3 is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to the California Code of Regulations, title 10, section 2910, by reason of Finding 4.

3. Respondent's conviction for a substantially related crime, as set forth in Finding 3, constitutes grounds to deny her application for a real estate salesperson license pursuant to Business and Professions Code sections 10177, subdivision (b); 480, subdivision (a)(1) and 475, subdivision (a)(2). However, by reason of Finding 12, licensure on a restricted status is appropriate and in the public interest.

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 10153.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subjected 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 15, 2005


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

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2 Department of Real Estate
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4 Los Angeles, California 90013-1105

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6 (Direct) (213) 576-6916

FILED
MAY 24 2005

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) NO. H-31946 LA
12 RACHELLE LEE CEBALLOS,)
13) STATEMENT OF ISSUES
14 Respondent.)
15)

16 The Complainant, Janice Waddell, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Statement
18 of Issues against RACHELLE LEE CEBALLOS, ("Respondent"), is
19 informed and alleges as follows:

20 1.

21 The Complainant, Janice Waddell, a Deputy Real Estate
22 Commissioner of the State of California, makes this Statement of
23 Issues against Respondent in her official capacity.

24 ///

25 ///

26 ///

27

2.

1 Respondent made application to the Department of Real
2 Estate of the State of California for a real estate salesperson
3 license on or about June 28, 2004, with the knowledge and
4 understanding that any license issued as a result of said
5 application would be subject to the conditions of Business and
6 Professions Code ("Code") Section 10153.4.
7

8 3.

9 (CRIMINAL CONVICTION)

10 On or about January 7, 2002, in the Superior Court of
11 California, Northeast District Department, County of Los
12 Angeles, in case No. GA045919, Respondent was convicted of
13 violating two (2) counts of California Penal Code Section 368
14 (c) (Willfully Cause Injury to Elder), felonies. This is a
15 crime involving moral turpitude and is substantially related
16 under Title 10, Chapter 6, Section 2910, California Code of
17 Regulations, to the qualifications, functions or duties of a
18 real estate licensee.
19

20 4.

21 The crime of which Respondent was convicted, as
22 alleged herein above in Paragraphs 3, constitutes cause for
23 denial of Respondent's application for a real estate license
24 under Business and Professions Code Sections 475(a)(2);
25 480(a)(1); and/or 10177(b).

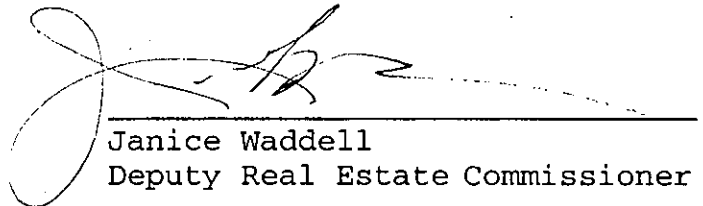
26 The Statement of Issues is brought under the
27 provisions of Section 10100, Division 4 of the Business and

1 Professions Code of the State of California and Sections 11500
2 and 11529 of the Government Code.

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

10 Dated at Los Angeles, California

11 this 23 day of May, 2005.

12
13
14 
15 Janice Waddell
Deputy Real Estate Commissioner

16 Cc: RACHELLE LEE CEBALLOS
17 Janice Waddell
18 Sacto.
19 CW
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25
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