

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

LISA MARIE KALFAYAN,

Respondent.

Case No.: H-33703 LA

OAH No.: L2007040405

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, August 29, 2007.

Cheryl Keily, Staff Counsel, represented the Complainant.

Respondent appeared in person and represented herself.

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

The record was held open until October 1, 2007, to allow Respondent to file a letter from her sponsoring broker.

On October 1, 2007, Respondent filed a letter from a sponsoring broker and the same was marked and received as Exhibit A. On October 2, 2007, Complainant filed her response and the same was marked and received as Exhibit 6.

The matter was deemed submitted on October 2, 2007, and Exhibits A and 6 were read and considered.

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

FACTUAL FINDINGS

Parties

1. Complainant Janice Waddell, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in her official capacity.

2. Respondent Lisa Marie Kalfayan made application to the Department of Real Estate of the State of California for a real estate salesperson license on April 3, 2006, 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.

Criminal Conviction

3. On July 27, 1999, Respondent, then a teenager and in company with another teenager, stole merchandise – women's clothing and underwear – from a Robinson's-May Department store. Respondent was arrested on the same day and subjected to criminal proceedings. Thereafter, on September 13, 1999, in the Municipal Court of California, Van Nuys Judicial District, County of Los Angeles, in Case No. 9PN04364, Respondent was convicted of violating Penal Code section 484(A) (Petty Theft), a misdemeanor. The crime is a crime of moral turpitude.

4. The crime involved the fraudulent taking of property belonging to another; the employment of deceit to achieve an end and the doing of an unlawful act with the intent of conferring an economic benefit on Respondent. Accordingly, the crime is substantially related to the qualifications, functions and duties of the applied-for-license.

5. As a result of the conviction Respondent was placed on a twenty-four month summary probation and ordered to pay fines and fees in the amount of \$765. Respondent, during the period of her probation was under the mistaken belief that "the misdemeanor had been dismissed" and failed to make a required court appearance. Ultimately, on June 20, 2007, Respondent's father, on behalf of Respondent paid the fines, fees and court costs and the probation was deemed ended and the proceeding was terminated.

Rehabilitation

6. Over the years which have followed the conviction Respondent has, during the process of maturation, conformed to society's rules and norms, as is demonstrated in the following Findings.

7. Respondent has suffered no other conviction. Respondent is presently, processing her petition for expungment.

8. Respondent is the mother of a nine year old daughter, a student at Bay Laurel Elementary School. Respondent goes on school field trips with her daughter and provides a positive example for her child by helping out in the classroom. Respondent's mother is deceased and she stays in contact with her father and with an older brother. Respondent does have stability of family life and does fulfill familial and parental obligations.

9. During 2005 and 2006 Respondent did successfully complete the 45 hour course in real estate principles, real estate practice and property management and received completion certificates for same. Respondent, therefore, has completion of training courses for economic self-improvement.

10. Respondent donates blood on a regular basis. She has, from time to time, participated in the Revlon Run/Walk and the Relay for Life organization to combat cancer. Respondent, therefore, has significant and conscientious involvement in church programs designed to provide social benefits and to ameliorate social problems.

11. Respondent has a change in attitude from that which existed at the time of her youthful, wrongful conduct. That change was brought about by a number of factors: Respondent's family responsibilities; Respondent's volunteer work; Respondent's contrition and Respondent's subsequent maturation from an errant teenager into a responsible adult. Respondent's change in attitude was evidenced by the credible testimony of Respondent.

Disclosure

12. In response to Question 25 of her license application, to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS 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 answered "No" and failed to reveal the conviction set forth in Finding 3. At the time she filled out the application the conviction was seven years remote and Respondent did not recall the conviction. Subsequently, as is indicated in Finding 5 the proceedings were terminated eight years after the conviction. The failure to fully disclose at the outset, on the application, was a lack of due diligence by Respondent – given the remoteness of the conviction – and not the result of fraud, misrepresentation or deceit or knowingly making a false statement of fact required to be revealed in the application. However, Respondent's lack of due diligence resulted in a material misstatement in the application.

LEGAL CONCLUSIONS

Applicable Law

1. Business and Professions Code section 10177 provides:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

- (a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal or reinstatement.
- (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of for conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

2. Business and Professions Code section 480 provides in pertinent part:

- (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
 - (1) Been convicted of a crime.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or professions for which application is made.

- - -
- (c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

3. Business and Professions Code section 475 provides, in part:

- (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:
 - (1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.
 - (2) Conviction of a crime.

4. California Code of Regulations, title 10, section 2910, provides in pertinent part:

- (a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of section 480 and 490 of the Code if it involves:
 - (1) The fraudulent taking, obtaining, appropriating or retaining of fund or property belonging to another person.

- - -
- (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.
- - -

- (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

Violations

5. Respondent's conviction, as set forth in Finding 3, constitutes cause for denial of Respondent's application pursuant to Business and Professions Code section 10177, subdivision (b) in that the crime is a crime of moral turpitude.

6. The crime set forth in Finding 3 is substantially related to the qualifications, functions and duties of a licensee of the Department under California Code of Regulations, title 10, section 2910, subdivision (a)(1)(4) and (8), by reason of Finding 4, and therefore cause exists for denial of Respondent's application under Business and Professions Code section 480, subdivision (a)(1).

7. Cause exists for denial of Respondent's application pursuant to Business and Professions Code section 475, subdivision (a)(2), by reason of Finding 3.

8. Cause exists for denial of Respondent's application pursuant to Business and Professions Code section 10177, subdivision (a), by reason of Finding 12.

9. No cause for denial of Respondent's application pursuant to Business and Professions Code sections 475, subdivision (a)(1) or Business and Professions Code section 480, subdivision (c), by reason of Finding 12.

Licensing Considerations

10. California Code of Regulations, title 10, section 2911, sets forth criteria of rehabilitation that have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), to evaluate the rehabilitation of an applicant for issuance of a license in considering whether or not to deny the issuance on account of a crime or wrongful act committed by the Respondent.

Respondent's conviction is more than two years remote and, thus, Respondent has met the initial factor set forth in the criteria, and by reason of Findings 6 through 11, Respondent has substantially complied with the remaining applicable criteria. Accordingly, by reason of Respondent's record of rehabilitation to date, and notwithstanding Finding 12, licensure of Respondent, on a restricted status, is consistent with the public interest. Respondent is, presently, a socially and professionally responsible person.

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:

- (b) 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
- (c) 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.

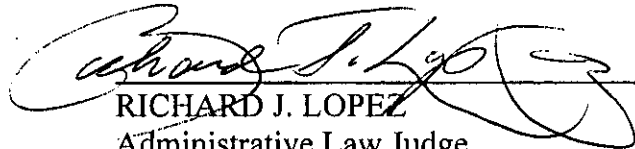
3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

- (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's 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 10153.5, 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 issuance of the preceding restricted license.

Dated: October 25, 2007


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

12/20/07

1 CHERYL D. KEILY, Counsel (SBN 94008)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-5770

FILED

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DEPARTMENT OF REAL ESTATE

BY: 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)	NO. H- 33703 LA
)	
12 LISA MARIE KALFAYAN,)	
)	<u>STATEMENT OF ISSUES</u>
13)	
14 Respondent.)	
)	

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

19 1.

20 The Complainant, Janice Waddell, a Deputy Real Estate
21 Commissioner of the State of California, makes this Statement
22 of Issues against Respondent in her official capacity.
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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 April 3, 2006.
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3.

6 (CRIMINAL CONVICTION)

7 On or about September 13, 1999, in the Municipal Court
8 of California, Van Nuys Judicial District, County of Los
9 Angeles, in Case No. 9PN04364, Respondent was convicted of
10 violating California Penal Code Section 484(A) (Petty Theft), a
11 misdemeanor. The underlying facts of this criminal conviction
12 involve moral turpitude, and bear a substantial relationship
13 under Title 10, Chapter 6, Section 2910, California Code of
14 Regulations, to the qualifications, functions or duties of a
15 real estate licensee.
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4.

18 (FAILURE TO REVEAL CONVICTION)

19 In response to Question 25 of her license application,
20 to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW?
21 CONVICTION EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE
22 DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH
23 DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE". Respondent
24 failed to reveal the conviction described in Paragraph 3 above.

25 Respondent's failure to reveal the convictions set
26 forth herein in Paragraph 3, above, in her license application
27 constitutes knowingly making a false statement of material fact

1 required to be revealed in said application, which is grounds
2 for denial of the issuance of a license under Business and
3 Professions Code Sections 480(c) and 10177(a).

4 5.

5 The crime of which Respondent was convicted, as
6 alleged herein above in Paragraph 3, constitutes cause for
7 denial of Respondent's application for a real estate license
8 under Code Sections 475(a)(2); 480(a)(1) and/or 10177(b).

9 The Statement of Issues is brought under the
10 provisions of Section 10100, Division 4 of the Business and
11 Professions Code of the State of California and Sections 11500
12 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, LISA MARIE KALFAYAN, 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 31 day of January, 2007.

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15 _____
16 Janice Waddell
17 Deputy Real Estate Commissioner
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25 Cc: LISA MARIE KALFAYAN
26 Janice Waddell
27 Sacto.