

FILED
FEB. 18, 2009
DEPARTMENT OF REAL ESTATE

By C.A.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-34993 LA
MAUREEN MARTINO McDERMUT,)	L-2008070518
Respondent.)	

DECISION

The Proposed Decision dated January 14, 2009, 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.

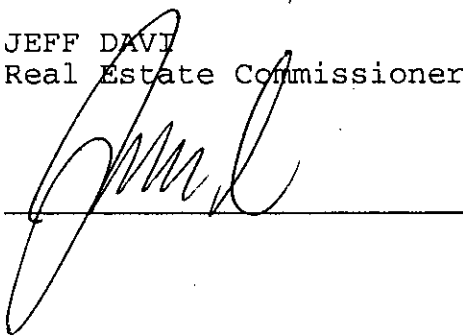
The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on March 10, 2009.

IT IS SO ORDERED _____ 2/11/09 .

JEFF DAVIS
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
MAUREEN MARTINO McDERMUT,

Respondent.

Case No. H-34993 LA

OAH No. 2008070518

PROPOSED DECISION

Amy C. Lahr, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on December 16, 2008, in Los Angeles, California.

Lisette Garcia, Real Estate Counsel, represented Maria Suarez (Complainant), a Deputy Real Estate Commissioner for the Department of Real Estate (Department), State of California.

Mary E. Work, Attorney at Law, represented Maureen Martino McDermut (Respondent).

The parties submitted the matter for decision on December 16, 2008.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent has been licensed as a real estate salesperson since January 22, 1994. Complainant seeks to revoke Respondent's license.
3. a. On November 22, 2005, the Santa Barbara County Superior Court, in case number 1108284, convicted Respondent, after a jury trial, of violating Penal Code section 192, subdivision (c)(2) (vehicular manslaughter without gross negligence), a misdemeanor; two counts of Vehicle Code section 20001, subdivision (a) (leaving the scene of an accident resulting in death and injuries), both felonies; and one count of Vehicle Code section 22107 (unlawful turning movement), an infraction.

b. The court sentenced Respondent to three years in jail, and five years probation, on terms that included a \$2,000 restitution payment, fines totaling \$915, driver's license revocation for one year, with suspension for the remaining probation term, 500 hours

of community service, and an order to provide blood and saliva samples, pursuant to Penal Code section 296, subsection (a)(1).

c. On December 17, 2007, the California Court of Appeal, Second Appellate District, affirmed Respondent's conviction.

4. The facts underlying this conviction are that on August 22, 2003, Respondent swerved her vehicle out of the driving lane, and fatally struck pedestrian Joseph Cohn. Mr. Cohn's body thrust forward and hit pedestrian Carol Spurgen, who fell and suffered injury. Respondent drove away from the accident scene without stopping and providing identifying information.¹

5. Respondent committed unlawful acts which caused substantial injury to Ms. Spurgen, and death to Mr. Cohn. In addition, she failed to stop and provide required identifying information.

6. Respondent expressed deep remorse about the accident. It occurred on an unlit road, on a dark summer night. Respondent had her radio on loudly. Respondent claims she did not know that she hit Mr. Cohn until the following evening, when she heard a news report describing the incident. Had she known that she hit someone, Respondent would have stopped. Respondent wishes that she had consciously acknowledged the accident when it occurred. If she were to have an accident now, Respondent would immediately stop and figure out what happened.

7. Respondent also expressed sincere concern and sorrow for the deceased victim's family. Respondent credibly testified that not a day passes without her thinking of the victim's family, and how sorrowful she is. Both parties submitted affidavits regarding whether Respondent had accomplished communicating her remorse to Mr. Cohn's family. The court finds that Respondent has attempted to express her remorse to them; however, her actions have not, understandably, been well received.

8. Respondent has received psychological counseling since September 2003. Carole Wolfson, her counselor, wrote a lettering supporting Respondent, further explaining her sorrow, and efforts to convey it to Mr. Cohn's family.

9. Respondent and Mr. Cohn's family live in the same community. Out of respect for the Cohn family, Respondent has changed some of her business practices, such as not advertising her name or photograph whenever possible.

¹ At the hearing, the parties disputed the weight to be accorded to details in the police report, such as the officer's accident depictions and drawings. All evidence was considered pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448. To the extent there were discrepancies between Respondent's version of the events and the police report, they did not affect the findings above.

10. Respondent served approximately five and one-half months in jail, and completed the remainder of her sentence with electronic monitoring. Respondent remains on probation until November 2010. She paid the fines and restitution associated with her conviction. In addition, Respondent's insurance company paid \$2.5 million dollars in a civil lawsuit settlement to Mr. Cohn's family and to Ms. Spurgen. The Department of Motor Vehicles reinstated Respondent's driver license on December 27, 2005.

11. Respondent is active in her community. She volunteers for Meals-on-Wheels, and has done so for five years before the accident. Respondent completed her community service work at Catholic Charities, and continues to volunteer at their food pantry. Lorenzo Martinez, the food pantry coordinator, submitted a letter attesting to Respondent's service, and that she is well liked. Respondent also volunteers at the La Casa De Maria retreat center. Stephanie Glatt, the director, wrote a letter in support of Respondent. In addition, Respondent regularly attends church, and her pastor, Maurice K. O'Mahoney, wrote a letter of recommendation.

12. Respondent presented two character witnesses: her sister, Michelle Martino; and long-time friend, Marilyn Kram. Ms. Martino testified that Respondent is a loving, caring individual who would not knowingly have left the accident scene. She reiterated Respondent's efforts to convey sorrow to Mr. Cohn's family. Ms. Kram has been Respondent's friend for 17 years; their families were close and traveled together. She spoke of the deep sorrow that Respondent felt for Mr. Cohn's family. Ms. Kram praised Respondent's good character.

13. Respondent has held her real estate salesperson license since 1994, and has no previous or subsequent complaints against her. Throughout her career, Respondent was and continues to be successful. Respondent submitted 11 character reference letters from colleagues, assorted real estate professionals, and clients, who unanimously gave her glowing reviews, and recommendations to continue in the profession. Her current office manager, Gregory Tice, said that Respondent is a hardworking, ethical agent. He urged this court to grant her an unrestricted license, and would gladly monitor Respondent under a restricted license.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), in conjunction with Business and Professions Code section 490, provide the Real Estate Commissioner with authority to revoke a salesperson's license when the licensee has been convicted of a felony or a crime that is substantially related to the qualifications, functions, or duties of real estate salesperson.

2. California Code of Regulations, title 10, section 2910, subdivision (a)(8), provides that a crime is substantially related to the qualifications, functions, or duties of a real estate salesperson's license if it involves "[d]oing of any unlawful act

with the intent . . . or threat of doing substantial injury to the person or property of another.”

3. Respondent was convicted of two felony counts of leaving an accident scene, and misdemeanor vehicular manslaughter. Respondent’s conduct involved unlawful acts that resulted in substantial injury to other persons. As such, Respondent’s conduct establishes that her conviction is substantially related to the qualifications, functions, and duties of a real estate salesperson.

4. Cause exists to suspend or revoke Respondent’s real estate salesperson license pursuant to Business and Professions Code sections 10177, subdivision (b), and 490, because she was convicted of felonies and other crimes that are substantially related to the qualifications, functions, and duties of a real estate salesperson by reason of Factual Findings 3 through 6, and Legal Conclusions 1 through 3.

5. California Code of Regulations, title 10, section 2912, provides criteria to evaluate a licensee’s rehabilitation, including: (a) the passage of not less than two years from the most recent criminal conviction that is “substantially related” to the qualifications, functions, or duties of a licensee; with a longer period required if there is a history of criminal convictions or acts substantially related to the licensee’s qualifications, functions, or duties; (b) restitution to any person who has suffered monetary losses through the licensee’s substantially related act; (c) expungement of the conviction which culminated in the administrative proceeding to take disciplinary action; (d) successful completion or early discharge from probation; (e) payment of any fine imposed in connection with the criminal conviction that is the basis for discipline; (f) correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted; (g) significant and conscientious involvement in community, church, or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and, (h) a change in attitude from that which existed at the time of the commission of the criminal acts, as demonstrated by the licensee’s testimony or other applicable evidence.

6. Respondent has addressed, and satisfied, a sufficient number of the rehabilitation criteria to justify retaining a restricted license. For example, more than two years have passed since Respondent’s conviction, and she has had no other criminal convictions or misconduct during that time. Although Respondent remains on probation until 2010, she has satisfied all other probation conditions, including restitution payment. Respondent is profoundly sorry for her actions, and also for the pain she caused Mr. Cohn’s family. Respondent has changed her advertising practices of her own volition. Moreover, Respondent presented a substantial amount of evidence indicating her rehabilitation and good character. This has demonstrated that she is not likely to continue to commit acts of moral turpitude, which supports the determination that she is fit to remain licensed. (See, *Hightower v. State Bar of California*, (1983) 34 Cal.3d 150, 157.) She is a contributing member of society. Respondent’s real estate reputation is sterling, and she is supported by many members

of the real estate community. Given these circumstances, protection of the public can be achieved with a restricted license.

ORDER

Maureen Martino McDermut's real estate salesperson license is revoked; provided, however, a restricted real estate salesperson's license shall be issued to Respondent, pursuant to Business and Professions Code Section 10156.5, if Respondent applies for and pays to the Department the appropriate fee for the restricted license within 90 days from the effective date of this Decision. Respondent's restricted license shall be subject to all of the provisions of Business and Professions Code Section 10156.7, and to the following limitations, conditions, and restrictions imposed under the authority of Business and Professions Code Section 10156.6:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until five years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

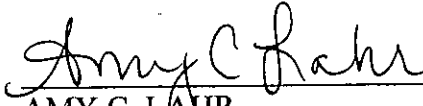
(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education

requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Dated: January 14, 2009



AMY C. LAHR
Administrative Law Judge
Office of Administrative Hearings

II

1 Pursuant to the provisions of Code Section 10153.3,
2 Respondent was originally licensed as a salesperson with the
3 Department on or about January 22, 1994.
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III

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6 On or about November 22, 2005, in the Superior Court
7 of California, County of Santa Barbara, Figueroa Division, in
8 Case No. 1108284, Respondent was convicted by jury of violating
9 one count of a lesser included offense of Penal Code Section
10 192(c)(2) (vehicular manslaughter without gross negligence), a
11 misdemeanor, two counts of Vehicle Code Section 20001(a)
12 (leaving the scene of an accident resulting in death and
13 injuries), felonies, and one count of Vehicle Code Section 22107
14 (unlawful turning movement), an infraction. Said conviction was
15 affirmed in full by the California Court of Appeal, Second
16 Appellate District, Division 6, on or about December 17, 2007.
17 On or about April 9, 2008, petition for review of said
18 conviction was denied by the California Supreme Court. Said
19 crime bears a substantial relationship under Section 2910, Title
20 10, Chapter 6, California Code of Regulations, to the
21 qualifications, functions or duties of a real estate licensee.
22

IV


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24 The crime of which Respondent was convicted, as
25 alleged in Paragraph III above, constitutes cause under Code
26 Sections 490 and 10177(b) for the suspension or revocation of
27

1 all licenses and license rights of Respondent under the Real
2 Estate Law.

3 WHEREFORE, Complainant prays that a hearing be
4 conducted on the allegations of this Accusation and, that upon
5 proof thereof, a decision be rendered imposing disciplinary
6 action against all licenses and/or license rights of MAUREEN
7 MARTINO McDERMUT, under the Real Estate Law (Part 1 of Division
8 4 of the Business and Professions Code) and for such other and
9 further relief as may be proper under other applicable
10 provisions of law.

11 Dated at Los Angeles, California

12 this 2nd day of June, 2008.

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16 Deputy Real Estate Commissioner
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24 cc: Maureen Martino McDermut
25 Sotheby's International Realty, Inc.
26 Maria Suarez
27 Sacto.