

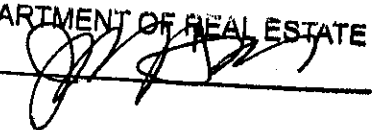
FILED

SEP 30 2010

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

* * * * *

In the Matter of the Accusation of)	No. H-36280 LA
)	
)	L-2009110382
CAROL LYNN BYRD,)
))
))
Respondent.)
_____))

DECISION

The Proposed Decision dated August 30, 2010, 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.

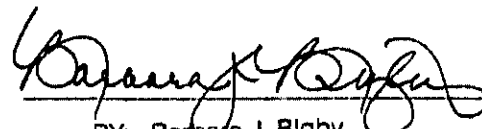
The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

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 OCT 20 2010.

IT IS SO ORDERED 9/29/2010

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

CAROL LYNN BYRD,

Respondent.

Case No.: H-36280 LA

OAH No.: 2009110382

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 10, 2010.

Julie L. To, Real Estate 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.

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

FACTUAL FINDINGS

Parties

1. The Complainant, Joseph Aiu, a Deputy Real Estate Commissioner of the State of California, brought the Accusation in his official capacity.
2. Respondent herein, Carol Lynn Byrd, is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate salesperson.

Criminal Conviction

3. On May 9, 2008 after having lunch and a few beers with a friend, Respondent drove away from the restaurant on onto State Route 91 (highway). While on the highway Respondent's vehicle was rear-ended by another vehicle. Respondent, in lieu of exchanging information with the errant driver of the other vehicle, left the scene in her vehicle subsequently subjecting her to criminal proceedings. Thereafter, on July 22, 2008, in the Superior Court of the State of California, County of Riverside, Case No. RIM515714, Respondent was convicted of violating California Vehicle Code section 20002, subdivision (a) (hit and run with property damage), a misdemeanor.

Aggravation

4. Police investigation of the incident set forth in Finding 3 revealed that Respondent was driving her vehicle under the influence of alcohol and had a blood alcohol content of 0.08 or more. Accordingly, as part of the proceeding set forth in Finding 3, Respondent was convicted of violating California Vehicle Code sections 23152, subdivision (a) (driving under the influence of alcohol or drugs) and 23152, subdivision (b) (driving with blood alcohol content of 0.08 percent or more), misdemeanors.

Mitigation

5. It was determined by Respondent's insurance carrier that she was not at fault for the property damage resulting to the vehicles. Respondent's driving privileges were not suspended, restricted or otherwise abrogated by the Department of Motor Vehicles and her driver's license remains in full force and effect. She left the scene not to evade arrest or to evade the law but – being under the influence of too much alcohol – she panicked.

Rehabilitation and Character

6. As a result of the three misdemeanors Respondent was subjected to electronic monitoring for 18 days in lieu of jail time, timely completed a First Offender DUI program and timely paid imposed court fines and assessments. She was placed on summary probation for three years and is in full compliance with same. She is in the process of petitioning the court for early termination of probation and expungement of the three misdemeanors. Respondent has suffered no other conviction.

7. Respondent, divorced, has joint custody of her two children, a daughter aged 17 and a son aged 10. Both children are good students. She is also the mother of a 23 year old son, a college graduate and a physical therapist employed in Arizona, who remains close to Respondent. Respondent has stability of family life and fulfills all familial and parental obligations.

8. Respondent is a member of Harvest Christian Fellowship, attends services with her two children on a regular basis and volunteers time and effort in assisting in the Fellowships Ministries designed to provide social benefits or to ameliorate social problems.

9. Respondent is presently employed at Remax Results under Broker/owner Ted Boecker. Mr. Boecker proffered a written testimonial on behalf of Respondent which states in probative part.

Carol Lynn Byrd came to this office in July 2007, and soon thereafter began to work almost exclusively with Broker-Associate Michael Novak-Smith in various capacities in his REO activities.

I have supervised and observed her activities as a licensee, and as a person, and have observed her to be a professional of the highest character. She is honest and forthright with me and in her dealings with others. She seeks guidance when needed, has excellent work habits, and is thorough and accurate in paperwork and files. I can not speak more highly of her dedication as a real estate licensee, and I have neither seen nor heard anything contrary to that assessment.

- - -

It is my opinion that she is a committed professional and an excellent agent who represents her clients very well, and her actions of July 22, 2008 do not affect or negate her abilities as a real estate licensee. In fact, this whole experience has probably made her a better agent and person.

- - -

10. Respondent was open, honest and candid in her testimony and has a change in attitude since May 9, 2008. Respondent now refrains from alcohol use although, other than Findings 3 and 4, there is no evidence of alcohol abuse. She is contrite and remorseful about her May 9 conduct. Her testimony, in sum, echoed that set forth in the previous Finding, that is, "... this whole experience has probably made her a better agent and person."

LEGAL CONCLUSIONS

Applicable Statutes

1. Business and Professions Code section 490 provides in pertinent part:

(a) . . . a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued.

(c) . . . a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. . . .

- - -

2. Business and Professions Code section 10177, subdivision (b) 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. . . .

- - -

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime substantially related to the qualifications, functions or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of 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.

- - -

Substantial Relationship

3. California Code of Regulations, title 10, section 2910, provides in 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 sections 480 and 490 of the Code if it involves:

- - -

- (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.

- - -

4. The necessary elements of a misdemeanor under Vehicle Code section 20002, subdivision (a) include the threat of doing substantial injury to the person or property of another. Leaving the scene of an accident without following the mandates of said section presents a threat of substantial injury or death to others. Accordingly, the crime set forth in Finding 3 bears a substantial relationship under California Code of Regulations, title 10, section 2910, subdivision (a)(8), to the qualifications, functions or duties of a real estate licensee.

Violation

5. Respondent's conviction for the substantially related crime set forth in Finding 3 constitutes grounds to discipline her real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

Penalty Considerations

6. California Code of Regulations, title 10, section 2912, 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 a licensee who is subject to disciplinary action on account of a crime or act committed by the Respondent. Additionally, the public interest must be considered in that the objective of an administrative proceeding relating to licensing is to protect the public. *Fahmy v. MBC* (1995) 38 Cal.App. 4th 8107, 817; *Ex Parte Brounsall* (1778) 2 Cowp. 829, 98 Eng.Rep. 1385.

7. Respondent is still on probation and the crime has not yet been expunged. However, Respondent's conviction is more than two years remote and, thus, Respondent has met the initial factor set forth in the criteria. Additionally, by reason of Findings 6 through 10, Respondent has complied with much of the remaining applicable criteria. Respondent has suffered no other conviction and has no history or pattern of wrongdoing. At present Respondent is a person of good character. Accordingly, by reason of Respondent's record of rehabilitation to date, licensure of Respondent, on a restricted status for a minimal one year period, is consistent with the public interest.

ORDER

All licenses and licensing rights of Respondent Carol Lynn Byrd under the Real Estate Law are revoked, provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days of the effective date of this Decision. The restricted license issued to 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 that Code:

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 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 the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the effective date of this Decision.

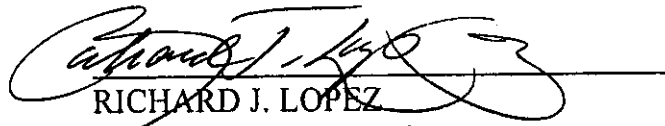
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(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 activities for which a real estate license is granted.

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: August 30, 2010


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

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FILED

SEP 28 2009

DEPARTMENT OF REAL ESTATE

BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H- 36280 LA
12)
13 CAROL LYNN BYRD,) A C C U S A T I O N
14) Respondent.)

15
16 The Complainant, Joseph Aiu, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against CAROL LYNN BYRD, a.k.a. Carol Lynn Chiuminatta
19 ("Respondent"), alleges as follows:

20 1.

21 The Complainant, Joseph Aiu, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation
23 in his official capacity.

24 2.

25 Respondent is presently licensed and/or has license
26 rights under the Real Estate Law, Part 1 of Division 4 of the
27

1 California Business and Professions Code ("Code"), as a real
2 estate salesperson.

3 3.

4 On or about July 22, 2008, in the Superior Court of
5 the State of California, County of Riverside, Case No.
6 RIM515714, Respondent was convicted of violating California
7 Vehicle Code Section 20002(A) (hit and run with property
8 damage), a misdemeanor. Respondent was sentenced to three years
9 probation; sentenced to 20 days jail; ordered to refrain from
10 driving with alcohol within six hours of consuming alcohol; and
11 ordered to attend and complete a First Offender DUI program for
12 four months.

13 4.

14 In aggravation, on or about July 22, 2008, in the
15 Superior Court of the State of California, County of Riverside,
16 Case No. RIM515714, Respondent was convicted of violating
17 California Vehicle Code Sections 23152(a) (driving under the
18 influence of alcohol or drugs) and 23152(b) (driving with blood
19 alcohol content of 0.08 percent or more), misdemeanors.

20 5.

21 The conviction described in Paragraph 3, by its facts
22 and circumstances, is a crime of moral turpitude and bears a
23 substantial relationship under Section 2910, Title 10, Chapter
24 6, California Code of Regulations to the qualifications,
25 functions or duties of a real estate licensee.

26 ///

27 ///

The crime of which Respondent was convicted, as described in Paragraph 3, constitutes cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of the license and license rights of Respondent under the Real Estate Law.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all the licenses and license rights of Respondent, CAROL LYNN BYRD, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at San Diego, California

this 17 day of September, 2009.

Joseph Aiu
Deputy Real Estate Commissioner

cc: CAROL LYNN BYRD
Moreno Valley Realty Inc.
Joseph Aiu
Sacto.