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MAY 18 2012

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: Medley

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In the Matter of the Application of) No. H-37391 LA
)
ERICA BERNICE ENRIQUEZ,) L-20111111022
)
Respondent.)
_____)

DECISION

The Proposed Decision dated April 12, 2012, 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. 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 JUN - 7 2012.

IT IS SO ORDERED

May 8, 2012

Real Estate Commissioner

Wayne S. Bell
By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ERICA BERNICE ENRIQUEZ,

Respondent.

Case No.: H-37391 LA

OAH No.: 2011111022

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 March 20, 2012.

Diane Lee, Staff Counsel, represented the Complainant.

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

Evidence was presented and the matter thereafter submitted.

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

FACTUAL FINDINGS

Parties

1. Complainant Joseph Aiu, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in his official capacity.

2. On July 29, 2010, Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license.

Procedure

3. The Department denied the application. Respondent timely requested a hearing. These proceedings are brought under the provisions of section 10100, Division 4 of the Business and Professions Code of the State of California and Government Code sections 11500 through 11528. All jurisdictional pre-hearing requirements have been met by the parties.

Criminal Convictions

4. On April 23, 2003, in the Superior Court of California, County of Orange, Case No. 02HF1143 (Case), a felony complaint was filed charging as follows:

COUNT 1: On or about May 30, 2002, Erica Bernice Enriquez and Cynthia Michelle Maestas, in violation of section 182 (a)(1) of the Penal Code (Conspiracy to Commit a Crime), a felony, did willfully and unlawfully conspire together and with another person and persons, whose identity is unknown, to commit the crime of 2nd degree robbery, in violation of section 211 of the Penal Code, a felony; that pursuant to and for the purpose of carrying out the objects and purposes of aforesaid conspiracy, the said defendant(s) committed the following overt acts and acts, at and in the County of Orange.

- - -

(Overt Acts Specified)

- - -

COUNT 2: On or about May 30, 2002, Erica Bernice Enriquez and Cynthia Michelle Maestas, in violation of section 487(a) of the Penal Code (Grand Theft), a felony, did willfully and unlawfully take money, labor, personal property and real property of a value exceeding \$400 from Tara Ruehling.

COUNT 3: On or about May 30, 2002, Erica Bernice Enriquez and Cynthia Michelle Maestas, in violation of section 12025(a)(1)/12025(b)(4) of the Penal Code (Person in Unlawful Possession having concealed Firearms in Vehicle), a felony, being in unlawful possession of a firearm, did willfully and unlawfully carry concealed within a vehicle which was then and there under his/her control and direction a .22 caliber semi-automatic pistol, a firearm capable of being concealed upon the person.

COUNT 4: On or about May 30, 2002, Erica Bernice Enriquez and Cynthia Michelle Maestas, in violation of section 496(a) of the Penal Code (Receiving Stolen Property), a felony, did willfully and unlawfully buy, receive, conceal, sell, withhold and

aid in concealing, selling and withholding property, to wit: California Driver License, Purse and Shoes, which had been stolen and obtained by extortion, knowing that said property had been stolen and obtained by extortion.

COUNT 5: On or about April 22, 2002, Erica Bernice Enriquez, in violation of section 417(a)(2) of Penal Code (Brandishing a Firearm), a misdemeanor, did willfully and unlawfully and not in self-defense and in the presence of another, draw or exhibit a loaded or unloaded firearm in a rude, angry or threatening manner, and, use the same firearm, in any manner, in a fight or quarrel.

5. On January 30, 2004, Respondent pled guilty to Counts 1, 2, 3, 4 and 5 set forth in Finding 4 offering to the court the following facts as the basis for the plea:

In O.C., on 5/30/02, I did willfully, unlawfully and knowingly conspire with Cynthia Maestas and Santiago Gonzaga to commit a robbery on a victim. (to take victim's property of value by force or fear.) In furthermore of this conspiracy, I made the following overt acts: 1) I put a ski mask & gun in Erica's car; 2) I followed victim who was driving her car; 3) We followed victim until she parked and got out of her car; 4) We entered V's car and took her bag and contents; 5) We waited for her to re-enter her car and proceeded to follow victim again, until we were stopped by police. I also took the property of Tara Ruehling which was valued over \$400.00 with the intent to deprive her of possession, and did conceal that property knowing it to be stolen. At the time I did all these acts, I was armed with a firearm which was concealed within the vehicle in which I was riding.

On 4/22/02, in O.C., I did willfully, unlawfully, and not in self-defense did brandish a firearm at another in a rude and threatening manner.

6. As a result of her plea of guilty in said case on January 30, 2004, in the Superior Court of California, County of Orange, Case No. 02HF1143, Respondent was convicted of violating California Penal Code sections 182(a) (1) (conspiracy to commit a crime), a felony; 487(a) (grand theft), a felony; 12025(a) (1)/12025(b) (4) (unlawful possession of concealed firearm in vehicle), a felony; 496(a) (receiving stolen property), a felony; and 417(a) (2) (brandishing a firearm), a misdemeanor.

7. All of said Penal Code violations set forth in Finding 6 constitute doing of unlawful acts 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 and, separately, is conduct which demonstrates a pattern of repeated and willful disregard of law. Accordingly, the crimes bear a substantial relationship to the qualifications, functions, or duties of a real estate licensee.¹

Rehabilitation and Character

8. Respondent has completed all jail time, probation and all court ordered sanctions as the result of all crimes. She has suffered no other conviction and has been and is in conformity to the rules and norms of civil behavior since the time of the conviction. She did serve one year in jail and was released on November 2, 2004 and did successfully complete probation on January, 2007. Because of her compliance, the probation was converted from formal to administrative. Accordingly, on March 26, 2009, pursuant to Respondent's petition and the Court having declared that Respondent had complied with terms of probation, the plea of guilty was set aside, a plea of not guilty entered and the case was dismissed as to all Counts pursuant to Penal Code 1203.4.

9. Respondent's sponsoring Real Estate Broker Kenneth Moorhead (Value Star Real Estate) who is aware of Respondent's criminal past proffered the following written (April 20, 2011) credible testimonial:

I will be employing Erica Enriquez with pleasure as my agent if she is licensed by the DRE. I am fully aware of Erica's 2004 convictions for Conspiracy, Grand Theft, Carrying a Concealed Firearm, Receipt of Stolen Property and Exhibition of a Firearm and her current problem with the Department of Real Estate, and I still believe she is an honest and professional individual.

Erica has personally expressed to me her remorse for her convictions. I know that she is very sorry. She has opened up, and let me know her process with the DRE, and I feel she would cherish her license with honor and be a great agent.

When she came into my office many years ago to seek office work I automatically knew she would be a great asset to our team here. I have never seen Erica act unprofessionally, violently or dishonestly in a business or working situation. She brings positivity, motivation, great spirits, and charm to our office. In fact, when title representatives come into our office Erica always makes them feel at home. She greets every client at our office, and she gives them a great sense of comfort.

¹ California Code of Regulations, title 10, section 2910, subdivisions (a) (8) and (a) (10).

I wish that Erica be granted a real estate license. I would agree to closely supervise her licensed activities if Erica gets a restricted real estate license. I support Erica 100%.

10. Respondent has been employed by Value Star as a transaction coordinator. In addition to his testimonial in Finding 9 Mr. Moorhead, who accompanied Respondent to the hearing in support of her application, credibly testified to Respondent's present character traits of honesty, trustworthiness and diligence. He further testified to Respondent's work ethic and her outstanding abilities as a transaction coordinator.

11. Prior to her employment with Value Star Respondent was employed by Colonial Realty Group. Colonial's Real Estate Broker, Kenneth McFarland proffered the following credible written attestation:

I know of Erica's 2004 convictions for Conspiracy, Grand Theft, Carrying a Concealed Firearm, Receipt of Stolen Property and Exhibition of a Firearm. I did not know Erica in 2004; however, I know her now and I find her pleasant to work with. I would not think of her today as she describes her past mistakes. I find Erica to be a trustworthy person, and she has learned from her early adulthood mistake. My opinion does not change about Erica knowing about her past because I have known her long enough to see she is not that person anymore.

Erica has done some contract processing in the past. She has brought a great value to this company with her grace. She is energetic, reliable, and most of all very polite. My staff all agrees with Erica's great workmanship. Anytime anyone needs a hand Erica is there to help. To this date I have never heard Erica complain.

I honestly can say that I would hire Erica over and over again. Erica has informed me on how she is trying to obtain her Real Estate License. I find Erica to be a professional business woman that will remain her consistent honest work values.

12. Respondent has taken courses in formal education at Riverside Community College in pursuit of an Associates Degree in Business. She has maintained an approximate 3.0 GPA. Additionally, Respondent has received a number of Certificates of Completion for continuing education in a number of subjects. Accordingly, Respondent has completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

13. A number of family members and friends familiar with Respondent's wrongful past and with her productive present proffered character letters on Respondent's behalf. The following, from Julie Herrera, is a credible exemplar of the letters:

I am the aunt of Erica Enriquez, I have known Erica all of her life. I am fully aware of the facts underlying Erica's criminal conviction's for Conspiracy, Grand Theft, Carrying a Concealed Firearm, Receipt of Stolen Property and Exhibition of a Firearm in 2004, and her current dilemma with the Department of Real Estate. I have seen Erica's character and attitude transition in the past 7 years from being immature and being involved in a criminal demeanor to a productive human being and giving back to the community.

Upon her release from incarceration, Erica expressed remorse for her actions and took responsibility for her behavior. Erica wanted to give back to the community and started to volunteer where ever she could. Erica has expressed her guilt feelings. She volunteered community service at the following locations:

The Leukemia & Lymphoma Society
Equality California
Reading to the Children at Gratts Elementary School
Peppermint Ridge (setting up meals for Thanksgiving Day)
The Bubel/Aiken Foundation
The Bunny Bunch S.P.C.R.
American Diabetes Association
Nourish America
Juvenile Hall (as a guest speaker for female juveniles with family and individual crisis)

Although, I am Erica's aunt, I am also a Deputy Probation Officer for Adult Felons. In my experience some people commit crimes because they are lacking something that is important to them. It appears that her actions that were immorally conducted stems from lack of supervision from her parents divorce in her early adolescent years. Erica was displaying negative behavior in need of her parent's attention. I truly believe since 2004, Erica has matured and has paid her dues to society. She has expressed great remorse and truly would like to get her Real Estate License. Erica is a hard worker and would be a great asset to any Real Estate Department. She is efficient in her work ethics and would go out of her way for her clients.

14. The following family members gave testimony on behalf of Respondent: Lydia Enriquez (mother), Daniel Enriquez (father), Julie Herrera (aunt), Delia Bailon (older sister and, also a Deputy Probation Officer). All credibly testified to Respondent's stability of family life; Respondent's maturation, her change in attitude, her reconciliation with all family members and to her present good character. Included in the credible commentary were the following phrases: "she's completely turned her life around; she's (now) a beautiful Christian"; "I fully trust her with everything"; "the most honest person I know"; "she has changed her whole life, she still expresses remorse".

15. Respondent did receive letters of appreciation for her volunteer work that is set forth in Finding 13. In addition to that work Respondent, through her managing, coaching, work and dedication was and is instrumental in the success of a Monday's Women's Softball League, Eagle Glen Park. By virtue of her volunteer work and softball success Respondent has significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

16. Respondent's testimony in her own behalf was open, candid and honest. She is contrite about her criminal past and that contrition persists. Over the time since the conviction Respondent has developed new and different social relationships from those which existed at the time of her criminal conduct, when she was then 20 years old. Her friends and associates now consist of work colleagues and fellow students at college. Respondent has a change in attitude from that which existed at the time of the conviction as demonstrated by her testimony, the testimony of Mr. Moorhead and the testimonials and testimony set forth in Findings 11, 13 and 14. Respondent is now a socially and professionally responsible person of good character.

LEGAL CONCLUSIONS

Violations

1. Cause exists for denial of Respondent's application for a real estate license pursuant to Business and Professions Code section 475, subdivision (a) (2), 480, subdivision (a) and 10177, subdivision (b) by reason of Finding 6 in combination with Finding 7.

Licensing Considerations

2. California Code of Regulations, title 10, section 2911 sets forth criteria for rehabilitation in an application case involving past criminal conduct. Respondent's conviction is more than two years remote and, thus, Respondent has met the initial factor set forth in the criteria. By reason of his rehabilitative efforts set forth in Findings 8 to 16 she has met or is meeting most remaining applicable criteria.

3. The objective of application proceedings is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the Department.² The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to Board licensees are designed to protect the public from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated.

4. Respondent's conduct leading to four felonies is severe. However, Respondent then a youth, is now a socially and professionally responsible person. Accordingly, licensure of Respondent, under restriction, and under the supervision of her sponsoring broker is consistent with 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 be 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 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.

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² *Camacho v. Youde* (1975) 95 Cal.App3rd, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal.App.3rd 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 816.

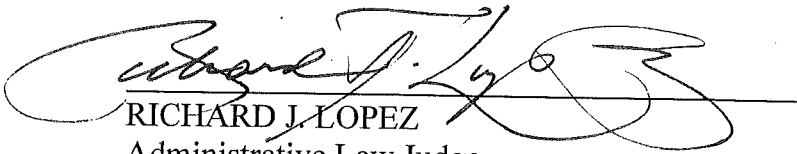
3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

- (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 10153.5, 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 10153.5 until four years after the date of the issuance of the preceding restricted license.

Dated: April 12, 2012


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

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