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DEC 12 2012

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: A. Anderson

* * * * *

In the Matter of the Accusation of)	No. H-37836 LA
)	
LILY GHILARDI JAGER,)	L-2012040166
)	
Respondent(s).)	
_____)	

DECISION


The Proposed Decision dated September 28, 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.

This Decision shall become effective at
12 o'clock noon on JAN - 2 2013

IT IS SO ORDERED

12/7/2012

Real Estate Commissioner


By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
of:

LILY GHILARDI JAGER,

Respondent.

Case No. H-37836 LA

OAH No. 2012040166

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on August 29, 2012, in Los Angeles. Complainant was represented by Diane Lee, Counsel. Respondent Lily Ghilardi Jager was present and represented herself.

At the conclusion of the hearing, the record was held open for complainant to file the Accusation in Case Number H-31828 LA. On September 4, 2012, a copy of said accusation was received, marked as Exhibit 7, and admitted into evidence.¹

Oral and documentary evidence having been received, the Administrative Law Judge submitted this matter for decision on September 4, 2012, and finds as follows:

FACTUAL FINDINGS

1. On or about August 7, 1995, the Department of Real Estate (Department) issued real estate salesperson license number S-01199911 and licensing rights to respondent Lily Ghilardi Jager. Her license was originally issued in the employ of James Dean Diversified Enterprises, Inc. in Long Beach and now expires on November 29, 2013. At all times relevant herein, respondent has held a real estate license and licensing rights under the Real Estate Law.

¹ The Administrative Law Judge hereby receives respondent's Exhibits A – K in evidence for the purpose of supplementing or explaining respondent's testimony pursuant to Government Code section 11513, subdivision (d).

2. On April 11, 2005, an Accusation in Case No. H-31828 LA was filed and served upon respondent, alleging that cause existed to suspend or revoke her real estate license under Business and Professions Code sections 490 and/or 10177, subdivision (b), for conviction of crimes. Respondent was alleged to have been convicted of driving under the influence of alcohol and/or drugs in violation of Vehicle Code section 23151, subdivision (a); driving with a blood alcohol level of 0.08 percent or more in her system in violation of Vehicle Code section 23152, subdivision (b); and child abuse, neglect, or endangerment in violation of Penal Code section 273a, subdivision (b), which were misdemeanors. It was further alleged that respondent's crimes involved moral turpitude and were substantially related to the qualifications, functions, or duties of a real estate licensee. In aggravation, respondent was alleged to have a prior conviction for driving with a blood alcohol level in excess of the legal limit and to have failed to disclose this prior conviction to the Department in 1999 when she applied for renewal of her real estate license.

3. (A) Effective on August 22, 2005, pursuant to a Stipulation and Agreement in the *Matter of the Accusation of Lily Ghilardi Jager*, Case Number H-31828 LA, OAH Number L-2005050074, the Department issued an Order revoking all licenses and licensing rights of respondent and granting her a restricted real estate salesperson license if she made application for one.

(B) Under the Stipulation and Agreement, respondent chose not to contest the factual allegations contained in said Accusation in Case Number H-31828 LA, and understood that, as a result, those factual statements, without being admitted or denied, would serve as a prima facie basis for disciplinary action. Respondent further agreed that the acts or omissions set forth in the said Accusation constituted cause for the suspension or revocation of all real estate licenses and license rights held by respondent under Business and Professions Code sections 490 and 10177, subdivision (b). Consequently, respondent's real estate salesperson's license was revoked and she was granted the right to apply for a restricted license with the conditions described, in part, below.

(C) The restricted real estate salesperson license issued to respondent under the Stipulation and Agreement was subject to the provisions of Business and Professions Code section 10156.7 and to certain conditions, limitations, and restrictions imposed under Business and Professions Code section 10156.6, including, in part, the following conditions:

“2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that she has violated provisions of the 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 to apply for issuance of an unrestricted real estate salesperson license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

¶¶

“6. During the term of any restricted license, Respondent shall submit to the Department of Real Estate as of the last day of each March, June, September and December, proof satisfactory to the Real Estate Commissioner of Respondent’s ongoing participation in a recognized alcohol diversion program. Said proof shall be submitted to the Manager of the Crisis Response Team at the Los Angeles Office of the Department of Real Estate and shall be verified as true and accurate by Respondent under penalty of perjury.

“The Commissioner may suspend the restricted license issued to Respondent pending a hearing held in accordance with Section 11500 et seq., of the Government Code, if such proof is not timely submitted as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until such time proof is submitted or until Respondent enters into an agreement satisfactory to the Commissioner to provide such proof, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.”

4. On or about August 22, 2005, respondent submitted an application for issuance of a restricted real estate license. Thereupon, the Department issued a restricted real estate license to respondent subject to the conditions described in Finding 3 above. Respondent continued to work for the same employing broker at James Dean Diversified Enterprises, Inc., of Long Beach. Under the restricted license, she was required to file her first quarterly report of her participation in an alcohol program for the quarter ending December 2005.

5. Six years later, on November 17, 2011, the Department issued an Order suspending respondent’s restricted real estate salesperson license for failing to file quarterly reports of her ongoing participation in a recognized alcohol diversion program in violation of condition number 6 of her restricted license. On or about December 23, 2011, respondent requested a hearing to contest the suspension of her restricted license. As such, respondent’s restricted real estate salesperson license has been suspended since November 17, 2011, and is neither active nor in full effect.

6. (A) The Administrative Law Judge takes official notice that, on January 26, 2012, the instant Accusation, Case Number H-37836 LA, was made and filed by complainant Robin Trujillo (Trujillo) in her official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California (Department).

(B) On or about March 9, 2012, respondent filed a Notice of Defense, acknowledging receipt of the Accusation and requesting a hearing to afford her the opportunity to present a defense or matters in mitigation or extenuation to the allegations in the Accusation. This matter ensued.

Current Accusation

7. (A) On August 5, 2008, Trujillo in her capacity as the Crisis Response Team Manager for the Department issued a letter to respondent regarding her quarterly reporting. Trujillo wrote to respondent that, pursuant to the Stipulation and Agreement which granted her a restricted real estate salesperson license, she was required to submit proof on a quarterly basis of her ongoing participation in a "recognized drug and alcohol diversion program" which had to be verified as true and accurate under penalty of perjury. Trujillo added that, "To demonstrate 'ongoing participation' you must attend a program at least once a week unless the Order granting you the restricted license specifies differently."

(B) In her letter of August 5, 2008, Trujillo informed respondent that she was required to file a statement or report at the end of each calendar quarter that contained certain information necessary to show satisfactory proof of her ongoing participation in a recognized alcohol diversion program or she could use an enclosed form entitled, "Quarterly Reporting Requirement." Respondent was advised that the last report she submitted was for June 2006 and the report did not demonstrate ongoing or weekly participation in a recognized alcohol diversion program. Trujillo indicated that respondent was delinquent on the following quarterly reports: September and December 2006; March, June, September, and December 2007; and March and June 2008. Trujillo further informed respondent that she was required to submit these delinquent reports to her by August 22, 2008, or the matter would be referred for to the Department's Legal Section for legal action for violating the terms of the Order granting her a restricted license.

8. After the transmittal of the August 5, 2008 letter, the Department did not take legal action against respondent. In or about June 2009, respondent filed a report for quarter ending June 2009 that showed she had attended an undetermined number of sessions at a recognized alcohol counseling or treatment program.

9. Two years later, on August 10, 2011, Trujillo wrote a second letter to respondent in her capacity as the Crisis Response Team Manager and reiterated that respondent was required under the terms of her restricted license to submit proof on a quarterly basis of her ongoing participation at least once a week in a recognized drug and alcohol diversion program. Trujillo wrote that the last quarterly report she had received from respondent was for the quarter ending June 2009 and that the following quarterly reports were delinquent: September and December 2009; March, June, September, and December 2010; and March and June 2011. Trujillo further informed respondent that she was required to submit these delinquent reports to her by September 1, 2011, or the matter would be referred for legal action for violating the terms of the Order granting her a restricted license.

10. On or about September 20, 2011, respondent filed a Quarterly Reporting Requirement form and a second page (Exh. 4, pages 2 – 3) in which she reported that she attended or participated in alcohol counseling or Alcoholics Anonymous (AA) meetings on a number of occasions between August 15, 2008, and May 6, 2011, as follows:

a. For the quarter ending September 2008, respondent attended seven alcohol or AA meetings which were on August 15, 22, and 29, 2008, and September 5, 12, 19, and 26, 2008;

b. For the quarter ending December 2008, respondent attended eight alcohol counseling or AA meetings which were on October 3, 10, 17, and 24, 2008, November 7, 2008, and December 12, 19, and 26, 2008;

c. For the quarter ending March 2009, respondent attended seven alcohol counseling or AA meetings which were January 9, 23, and 30, 2009, February 20, 2009, and March 6, 20, and 27, 2009;

d. For the quarter ending June 2009, respondent attended one alcohol counseling or AA meeting which was on April 3, 2009;

e. For the quarter ending September 2009, respondent attended five alcohol counseling or AA meetings which were on July 7 and 31, 2009, August 7, 2009, and September 18, 2009;

f. For the quarter ending December 2009, respondent did not report having attending any alcohol counseling or AA meeting;

g. For the quarter ending March 2010, respondent attended two alcohol counseling or AA meetings which were on January 12, 2010, and on March 22, 2010;

h. For the quarter ending June 2010, respondent attended one alcohol counseling or AA meeting which was on June 16, 2010;

i. For the quarter ending September 2010, respondent attended one alcohol counseling or AA meeting which was on September 24, 2010;

j. For the quarter ending December 2010, respondent attended one alcohol counseling or AA meeting which was on November 22, 2010;

k. For the quarter ending March 2011, respondent attended one alcohol counseling or AA meeting which was on February 22, 2011; and

l. For the quarter ending June 2011, respondent attended one alcohol counseling or AA meeting which was on May 6, 2011.

11. The Quarterly Reporting Requirement form and the second page attached thereto that respondent filed on September 20, 2011, was not a quarterly report showing proof of her ongoing participation in a recognized alcohol program during any specific preceding calendar quarter as required by condition number 6 of her restricted real estate salesperson license. Rather, respondent used a Quarterly Reporting Requirement form to submit a summary of her attendance at alcohol counseling or AA meetings during the period from August 2008 through May 2011.

12. On or about December 21, 2011, after issuance of the Accusation in this matter, respondent submitted a Quarterly Reporting Requirement form (Exh. 4, p. 4) that showed she attended alcohol counseling or AA meetings on two occasions in the last two quarters of 2011: September 16, 2011, and December 20, 2011.

13. (A) On or about August 29, 2012, respondent submitted to the Department a three-page summary (Exh. A) of her attendance or participation in alcohol counseling or AA meetings beginning with the quarter ending September 2009 and continuing through the quarter ending September 2012. The first two pages of the summary contained the same dates and alcohol programs that respondent attended from July 17, 2009, through May 5, 2011, which she had previously described on the Quarterly Reporting Requirement form filed a year earlier on September 20, 2011, as set forth in Finding 9 above.

(B) In addition, on the third page of her August 29, 2011 summary (Exh. A), respondent reported that she attended alcohol counseling or AA meetings on six occasions in the preceding 12 months as follow: September 16 and December 20, 2011; and January 26, February 28, May 2, and July 27, 2012.

14. Respondent's August 29, 2012 three-page summary of her attendance at alcohol counseling or AA meetings from July 17, 2009, through September 27, 2012, was not a quarterly report showing proof of her ongoing participation in a recognized alcohol program during a preceding calendar quarter as required by condition number 6 of her restricted real estate salesperson license.

15. Based on Findings 2 – 4 and 7 – 14 above, following the quarter ending June 2009 for which she filed as quarterly report and continuing each quarter thereafter, respondent failed to submit quarterly reports of her ongoing participation in a recognized alcohol diversion program in violation of condition number 6 of the Department's Order granting her a restricted real estate salesperson license. As alleged in paragraph 5 of the Accusation, respondent thus failed to submit the required quarterly reports for quarters ending as follows; September 2009, December 2009, March 2010, June 2010, September 2010, December 2010, March 2011, and June 2011.

Other Evidence

16. Respondent admits her 2003 conviction for driving under the influence of alcohol (DUI) and does not disavow the Department's reason for disciplining her license in 2005. On or about February 22, 2003, respondent was arrested while driving through Newport Beach after visiting a friend and drinking wine. Her blood alcohol level at the time of her arrest was 0.17 percent. On or about June 23, 2003, she was convicted of driving under the influence and driving with a blood alcohol level above the legal limit and placed on probation. As part of her probation, respondent was required to complete a DUI course, attend AA meetings, and pay a fine. On an undetermined date, respondent successfully completed probation for her conviction.²

17. Respondent does not deny that she failed to file the required quarterly reports of her ongoing participation in alcohol program since the quarter ending June 2009. Rather, respondent ostensibly contends that her restricted license required her to participate in an alcohol program only on an ongoing basis and not necessarily on a once weekly basis. As set forth in her summaries of attendance at alcohol counseling or AA meetings, however, respondent did not attend or participate in any recognized alcohol counseling or treatment program in any ongoing or consistent basis for the past three years much less on a weekly basis. Her claim that she did not know she

² Respondent testified that the probation for her DUI conviction was for one year. The Administrative Law Judge takes official notice that a probationary term for a DUI conviction with a prior conviction for the same offense is usually not less than three years.

had to attend an alcohol program at least once weekly was not persuasive, for the Department notified her in letters dated August 5, 2008, and August 10, 2011, that she was required not only to submit quarterly reports but also to attend an alcohol program at least once a week to demonstrate ongoing participation.

18. Respondent attended AA meetings at programs in Long Beach near her real estate office and in Huntington Beach near her home. She did not attend AA meetings more frequently because she was so busy with her real estate sales activities. It was not established that, since issuance of her restricted license, respondent allowed alcohol consumption to interfere with or affect her real estate activities.

19. For 17 years after issuance of her real estate salesperson license in 1995, respondent was employed at James Dean Diversified Enterprises, Inc., doing business as Century 21, 2679 Redondo Avenue, Long Beach. Beginning in 1996 and continuing until 2009, respondent received annual awards for her production as a real estate salesperson for the company. In a letter dated September 8, 2011, James Utterback, real estate broker and chief executive officer at Century 21, stated that respondent has worked for six years under her restricted real estate license and remained a consistent salesperson who handled the transactions of her clients with integrity and care. Respondent also submitted letters of recommendation from two lenders and two real estate clients.

20. Since issuance of her restricted license, respondent has not suffered a conviction for DUI or any other offense. Moreover, respondent has not been the subject of any complaints from clients or charged with any violations of the Real Estate Law.

21. (A) In his letter, real estate broker Utterback requested that condition number 6 be "lifted" from respondent's restricted license. The two lenders likewise wrote to ask that the condition be removed. Respondent apparently does not understand that, under condition number 3 of her restricted license, she was eligible for issuance of an unrestricted license since August 2007 but she was required to first file an application with the Department to obtain issuance of an unrestricted license or removal of any conditions of her restricted license.

(B) At no time after issuance of her restricted real estate salesperson license has respondent applied to the Department for the issuance of an unrestricted real estate salesperson license or for the removal of any of the conditions of her restricted license.

22. Respondent has not been employed since her real estate license was suspended. She has had difficulty paying her home mortgage. She is a single parent whose son attends college at California State University Long Beach.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's restricted real estate salesperson's license under Business and Professions Code section 10177, subdivision (k), for violating a term, condition, restriction, or limitation contained in an order granting a restricted license, based on Finding 15 above.

2. Discussion—On August 22, 2005, due to her June 2003 conviction for DUI and driving with a blood alcohol level in excess of the legal limit, respondent's real estate license was revoked and she was issued a restricted real estate salesperson license pursuant to a Stipulation and Agreement and an Order of the Real Estate Commissioner. Her restricted license was subject, in part, to a condition that she file quarterly reports showing her "ongoing participation in a recognized alcohol diversion program."

Beginning with the quarter ending December 2005, respondent was required to file the required quarterly reports. In August 2008, respondent was notified that certain quarterly reports were delinquent and that she was required to attend an alcohol program at least once a week to show her ongoing participation. She filed a quarterly report for the quarter ending June 2009. After receiving a second notice in the August 2011 letter that other quarterly reports were delinquent, respondent filed summaries of her attendance at AA meetings. However, after the quarter ending June 2009, she did not file any quarterly reports that met the requirements of her restricted license and violated the pertinent condition of her restricted license.

On the other hand, there are mitigating factors to respondent's violation of the condition of her restricted license. She completed probation for the DUI conviction which was the basis for disciplinary action on her real estate license. She attended a DUI course and AA meetings. She has obeyed all laws and has no further convictions. Her completion of probation constitutes significant evidence of her rehabilitation not only from her conviction but also from her problem with alcohol consumption. Moreover, since issuance of her restricted license in August 2005, respondent has not engaged in any unprofessional conduct that harmed the public nor has she violated any provision of the Real Estate Law. For six years until her license was suspended in November 2011, respondent performed her licensed real estate activities in a lawful manner and with integrity. At no time has alcohol or alcohol consumption caused respondent to act in an unprofessional manner. Finally, under her restricted license, respondent was eligible in August 2007 to apply for an unrestricted license or for removal of conditions of her restricted license but did not do so.

Here, the weight of the evidence suggests that respondent stopped attending AA meetings on a regular basis after she completed probation for her DUI conviction, which was most likely three years after her conviction or in June 2006. She had dutifully attended AA meetings, which was required as part of her criminal probation, and filed required quarterly reports of her AA meetings with the Department when she was subject to the terms and conditions of her criminal probation. When her probation ended, respondent attended AA meetings and filed quarterly reports but on an irregular and inconsistent basis due perhaps to a belief that she does not have a problem with alcohol or with drinking alcohol to excess. Respondent must understand that her two prior DUI convictions constitute evidence that she has a problem with alcohol and the Department disciplined her license in 2005 as a matter of public protection. In the absence of probative evidence, such as report from a medical specialist in substance or alcohol abuse, that she is rehabilitated from her use of alcohol and based on the conditions of her restricted license, the Department expected that she continue to attend AA meetings and file quarterly reports in accordance with the condition of her restricted license.

Based on the evidence showing that respondent has not violated the law, not allowed alcohol to affect her real estate activities, and worked competently as a real estate licensee under her restricted license, it must be concluded that she does not represent a danger to the public and should be given another chance to practice real estate. Respondent should be issued a restricted license and required to attend AA meetings on a weekly basis for one year before she can file an application for issuance of unrestricted license. She can benefit from attendance at AA meetings and her ongoing participation in an alcohol counseling program will serve to confirm that her use of alcohol is not a concern for the public interest and welfare. Finally, the restricted license to be issued to respondent will not be suspended, for the suspension of her license since November 2011 is a sufficient deterrent and any further suspension will not serve any useful public purpose.

* * * * *

Wherefore, the following Order is hereby made:

ORDER

All licenses and licensing rights previously issued to respondent Lily Ghilardi Jager under the Real Estate Law are revoked, based on Conclusions of Law 1 and 2, jointly and for all; provided, however, a restricted real estate salesperson license will be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision and Order. The restricted license issued to respondent 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 sections 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 one (1) 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 to activities for which a real estate license is required.

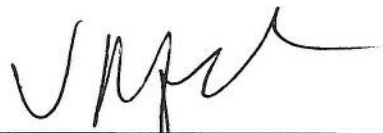
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Within six months from the effective date of this Decision, respondent shall take and pass the Professional Responsibility Examination administered by the Department of Real Estate, including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Real Estate Commissioner may order the suspension of respondent's license until he passes the examination.

7. During the term of any restricted license, respondent shall submit to the Department of Real Estate as of the last day of each March, June, September, and December, proof satisfactory to the Real Estate Commissioner of respondent's ongoing participation in a recognized alcohol counseling or treatment program, such as Alcoholics Anonymous. Ongoing participation shall mean that respondent must attend an alcohol program on at least a once weekly basis. Said proof shall be submitted to the Manager of the Crisis Response Team at the Los Angeles Office of the Department on a Quarterly Reporting Requirement form, which shall be verified as true and accurate by respondent under penalty of perjury.

The Real Estate Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with Government Code section 11500 et seq., if such proof is not timely submitted as provided for under this Decision, or as provided for in a subsequent agreement between respondent and the Real Estate Commissioner, if any. Any suspension shall remain in effect until such time proof is submitted or until respondent enters into an agreement satisfactory to the Real Estate Commissioner to provide such proof, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

Dated: September 28, 2012



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings