

glaß
Sack

FILED

OCT 11 2013

BUREAU OF REAL ESTATE

By John M

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) BRE No. H-38278 LA
KAREN ANN THELIN,) OAH No. 2012090192
)
)
)
)
)
 Respondent.)
)

DECISION

The Proposed Decision dated September 9, 2013, 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 October 31, 2013

IT IS SO ORDERED

REAL ESTATE COMMISSIONER

WAYNEBEL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

KAREN ANN THELIN,

Respondent.

Case No. H-38278 LA

OAH No. 2012090192

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 9, 2013.

Diane Lee, Staff Counsel, represented Complainant Robin Trujillo, Deputy Real Estate Commissioner in the Bureau of Real Estate (Bureau).

Attorney Mary Work represented Respondent.

Oral and documentary evidence was received and the matter was submitted August 9, 2013.

Complainant brings this Accusation to revoke Respondent's real estate salesperson license. For the reasons set out below, the license is revoked, but revocation is stayed and Respondent may apply for a restricted license.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued this Accusation in her official capacity.
2. Respondent has been a licensed real estate salesperson in California since June 25, 2001. Her license expires June 27, 2017. On July 19, 2012, Complainant brought this Accusation to revoke her license, and Respondent timely requested a hearing.

Criminal Convictions

3. On June 7, 2010, in Los Angeles Superior Court case number 0PY01029-01, Respondent was convicted on her no contest pleas of theft (Pen. Code, § 484, subd. (a)) and leaving the scene of an accident "resulting only in damage to property" without stopping to

give the other party identification and contact information (Veh. Code, § 20002, subd, (a)), both misdemeanors. Respondent was fined \$3,968, placed on summary probation for three years, ordered to pay restitution, and ordered to complete 300 hours of community service.

Mitigation, Aggravation and Rehabilitation

4. Respondent's conviction resulted from an incident on December 20, 2009, in which she stole three items, worth \$11.37 total, from a Rite Aid store, and then damaged a car as she drove away. She testified at hearing that she did not know why she did it; she had cash and credit cards and could have paid for the merchandise.

5. Question 20 of the Bureau's Interview Information Statement form that Respondent filled out on December 27, 2010, asked that she summarize each criminal conviction she had suffered. She listed the hit-and-run conviction but omitted the theft conviction because, she testified at hearing, she was "horribly embarrassed about it." The Conviction Detail Report she submitted the same day was misleading. She wrote:

I was at the Rite Aid Store in Valley Village on 12-20-09 at approximately 6:30 p.m. I exited the store and a man grabbed me and my purse in the parking lot. There was a struggle. I believed this man was trying to mug me. I ripped the purse away from him and jumped in my vehicle. The man grabbed my car door and forcefully flung it open. It struck the vehicle door next to me (a Mercedes sedan). The man jumped out of his vehicle and ran over and punched the rear quarter panel of my car and dented it. I panicked and put my car in reverse and left.

I made an error in judgment and shouldn't have left the scene. The parking lot was dark and there were not many people around and I was afraid. In retrospect, I should've waited for the police. I later phoned the police department and actually went to meet with an officer. I fully cooperated with her and took responsibility for my actions.

Her Conviction Detail Report did not mention that she was accosted in the parking lot because she had stolen merchandise from the store, or that the person who accosted her (a woman, as it turned out) was a loss prevention officer, not a mugger. At hearing, Respondent admitted that the loss prevention officer identified herself, that Respondent knew when she got into her car to get away that it was wrong to take stolen goods and run away from a loss prevention officer, and that she contacted the police department only several weeks later, after a detective left a card asking her to call. Her Conviction Detail Report also made it appear that Respondent was victimized by the victim (the man who got of the Mercedes to intervene when he saw the loss prevention officer struggling with Respondent), because he punched the rear quarter panel on her car and dented it, not acknowledging that the normal response of someone worried about being hit by a car pulling out of a parking space is to hit the car so the driver will stop.

6. At hearing, Respondent admitted that she had not been truthful with the Bureau¹ in 2010, but said her attitude has changed since then, and she now takes full responsibility for her actions.

7. Respondent was under stress at the time she committed the crimes. In 2009 her father died. She also had spine fusion surgery a few months before the crimes, leaving her with nerve damage and long regimen of physical rehabilitation to regain strength in her left leg. The real estate market crash was another source of stress during that time.

8. Respondent paid the fine and paid \$3,900 in restitution to the victim, in addition to \$20,000 that her insurance company paid him. There was no competent evidence of what exactly the victim was compensated for, or how the amount was computed.² Respondent completed 300 hours of community service with the American Red Cross. Her probation ended June 13, 2013. Her convictions have not been expunged.

9. Respondent was licensed as a real estate agent in Minnesota for five years before she moved to California. That license expired after she moved to California. She has worked at the same real estate brokerage since 2001. She has no history of license discipline in either Minnesota or California and no other convictions.

10. Respondent started psychotherapy when she was 17 (about 1981), but stopped in 2000. She started again about the time of her conviction, and has had therapy sessions every week for the last three years. Catherine Edelman, Respondent's psychotherapist since November 2012, testified at hearing that Respondent was a survivor of childhood domestic violence. Edelman opined that Respondent has taken responsibility for what she did, and is now a more compassionate person. Respondent has implemented a stress management plan that includes "mindfulness meditation" and exercise. Edelman testified that Respondent needs therapy weekly until 2014, and then continuing biweekly.

11. Respondent has volunteered with SHARE! (the Self-Help And Recovery Exchange) finding new housing for low-income and homeless persons since July 2012, about the time the Accusation was filed. She spends about eight hours a week on SHARE! tasks. She also volunteers occasionally with the Humane Society. Camille Dennis, the volunteer coordinator for SHARE!, wrote a letter praising Respondent's commitment and willingness to help not only with finding housing, but to assist at meetings and "recovery festivals," which are showcases where

¹ The Bureau was then known as the Department of Real Estate.

² According to Respondent's testimony and written statement to the Board, the victim claimed that Respondent ran over his foot as she drove away, and Respondent believes that the claim is fraudulent. The police report, the only admissible evidence relevant to the point, supports her belief that she did not run over his foot or otherwise injure him physically. It indicates that on the day of the incident the victim did not claim Respondent ran over his foot. Rather, the victim and his wife reported that Respondent hit the door of their Mercedes with the door of hers. It does not report any statement that there was an injury, and the "Injury/Medical" section of the report form says only, "None."

persons in need of help can find an assortment of mental health and addiction support organizations. Dennis knew about Respondent's convictions.

12. Gladys Azenzer, the branch manager at the brokerage where Respondent has worked since 2001, wrote a letter saying she and Respondent "discussed the events of the incident in the complaint" and expressing confidence that Respondent would continue to conduct herself ethically and professionally as she has in the past.

13. Keith Bjelajac, Respondent's husband, met her in 2002. They were married in August 2011. Before they were married, their relationship was both professional and personal (they met on Match.com). She represented him in ventures involving buying properties, rehabilitating them up and reselling them. There were about 20 such transactions, counting purchases and sales separately. Two of his acquaintances each entrusted her with \$100,000 to find properties suitable for similar ventures. He described Respondent as good at remodeling and decoration, but said that the art of the deal — buying at the right price — is what is important for her. He has seen a change in her attitude since her convictions, and does not think she is capable of committing theft or leaving the scene of an accident now.

14. Sergio Bosnich of Global Village Fine Properties wrote an undated letter saying that he and Respondent had represented the seller and buyer, respectively, in a real estate transaction "about 3 years ago." He was impressed with her concern for the clients, and has since referred clients to her with good results. His letter shows that he was unaware of the conviction for theft: there was "no doubt" in his mind that Respondent "was in the wrong place at the wrong time and with no fault on her own victim of circumstances." [sic]³

15. Respondent introduced four letters addressed "to whom it may concern." One was from a neighbor, "good friend" and member of the condominium homeowner's association of which Respondent is president. She wrote that Respondent has brought peace to an association that had long experienced conflict before her tenure as president. A real estate investor client and residential purchaser client attested to her competence, diligence and concern for their welfare. The residential purchaser noted that Respondent dissuaded her from a buying a house she was intent on buying because it would be a poor investment, thus passing up a sure commission. A co-worker real estate salesperson wrote that Respondent "warm, honest and passionate," and helpful to less experienced agents. None of these writers knew about the Accusation or the convictions when they wrote the letters.

16. There was no evidence of Complainant's costs of investigation and enforcement.

³ He seems to have based this conclusion not only on what Respondent told him (he apparently knew nothing of the shoplifting) but on what he called his own "due diligence" search of "every available public record on Ms. Thelin's accuser," including a search of Los Angeles Superior Court records showing "Ms. Thelin's accuser's astonishing involvement in 18 civil case litigations in the last 15 years," from which Bosnich apparently inferred that the victim was asserting a fraudulent claim in each case. Bosnich's remarks about the victim, involving several layers of hearsay, are significant only because his views affected other testimony at hearing. Catherine Edelman, Respondent's psychotherapist, testified that the victim "has 23 counts of fraud," but admitted she had no personal knowledge on the subject.

LEGAL CONCLUSIONS

1. There is cause to revoke or suspend Respondent's license under Business and Professions Code sections 490 and 10177, subdivision (b),⁴ as paragraph 4 of the Accusation alleges. Section 490, subdivision (a) allows a board to revoke a license if 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." Section 10177, subdivision (b), which applies specifically to the Bureau, similarly allows it to revoke a license if the licensee has been convicted of "a crime substantially related to the qualifications, functions, or duties" of a real estate licensee. Theft and leaving the scene of an accident (Factual Finding 3) are both substantially related crimes under CCR section 2910, subdivision (a)(8) because each is an "unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator."

2. Respondent has the burden of showing rehabilitation. She meets some of the applicable criteria of rehabilitation set out in CCR section 2912:

a. More than two years have passed since her convictions (CCR §2912, subd. (a); Factual Finding 4.) (Her two convictions arising out of the same incident do not amount to a "history" of criminal activity requiring a longer post-conviction period for purposes of CCR §2912, subd. (a).)

b. She has paid the required restitution (CCR §2912, subd. (b); Factual Finding 8), and paid the fine. (CCR §2912, subd. (g); Factual finding 8.)

c. Her convictions have not been expunged (CCR §2912, subd. (c); Factual Finding 8), but she has completed probation (CCR §2912, subd. (e); Factual Finding 8.)

d. She has not established new and different social and business relationships (CCR §2912, subd. (h)) but has established stability of family life. (CCR §2912, subd. (j); Factual Finding 13.)

e. She has shown significant involvement in programs designed to provide social benefits or to ameliorate social problems. (CCR §2912, subd. (l); Factual Finding 11.)

3. On the critical question of change in attitude from that which existed at the time of the crimes (CCR §2912, subd. (l)), she presents a mixed picture. Her false statements to the Bureau demonstrate an unwillingness to take responsibility for her actions, but that was nearly three years ago, and she has been conscientious both in pursuing therapy and coming to terms with her problems (Factual Finding 11) and become more involved in the community (Factual Finding 10). She has been licensed and working as a real estate salesperson for 12 years, and by all accounts has done her job competently and ethically, (Factual Findings 12-15), with an unblemished professional record. (Factual Finding 9.) The

⁴ Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to the title 10 of the California Code of Regulations.

person closest to her personally and professionally had enough confidence in her after the convictions to marry her. (Factual Finding 13.) She does not appear to pose a significant threat to the public, but a lengthy period of restriction with mental health monitoring provisions is in the public interest.

ORDER

All licenses and licensing rights of Respondent Karen Ann Thelin under the Real Estate Law⁵ are revoked; but a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent applies for and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all 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 before 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 before 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 or for the removal of any of the conditions, limitations or restrictions of a restricted license until five years after the effective date of this Decision.
4. 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.
5. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of

⁵ Section 10000 et. seq.

Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

6. 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 Bureau 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.

7. Respondent shall be treated by a qualified psychotherapy counselor for at least a half hour twice each calendar month. She shall submit reports by the end of each calendar quarter verifying that she has attended the required psychotherapy sessions, with the signature of the psychotherapist.

DATED: September 9, 2013

Howard Posner
HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings