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FILED

AUG 07 2014

BEFORE THE BUREAU OF REAL ESTATE

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

By *W. S. Bell*

In the Matter of the Accusation of)	CalBRE No. H-39102 LA
)	OAH No. 2013110673
MICHELLE MARIA PAULA SMITH,)	
)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated June 20, 2014, 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 AUG 27 2014.

IT IS SO ORDERED

7/31/2014

REAL ESTATE COMMISSIONER

Wayne S. Bell

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHELLE MARIA PAULA SMITH,

Respondent.

DRE No. H-39102 LA

OAH No. 2013110673

PROPOSED DECISION

Administrative Law Judge Gloria A. Barrios, heard this matter on May 20, 2014, in Los Angeles, California.

James R. Peel, Counsel for the Bureau of Real Estate (Bureau) represented Robin Trujillo (Complainant), Deputy Real Estate Commissioner.

Michelle Maria Paula Smith (Respondent) was present and represented herself.

The record remained open for submission of character reference letters from Respondent and for any response thereto from Complainant. Respondent failed to submit any such letters. There was no objection from Complainant. The record was closed and the matter was submitted for decision on June 10, 2014.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent has been licensed as a real estate salesperson since December 8, 2007. The license has been renewed through December 7, 2015.
3. On December 20, 2010, Respondent was convicted, after her plea of nolo contendere, of violating Penal Code section 666, (petty theft with a prior)¹, a misdemeanor (*People v. Michelle Maria Smith*, Superior Court of the State of California, County of Los

¹On April 5, 2000, Respondent was convicted of violating Penal Code section 484, (petty theft), (shoplifting), a misdemeanor (*People v. Michelle Maria Smith*, Superior Court of the State of California, County of Los Angeles, case number OSE00586.) The convictions were expunged (dismissed) by court order pursuant to Penal Code section 1203.4.

Angeles, case number NA084137.) Imposition of sentencing was suspended, and Respondent was placed on summary probation for three years on terms and conditions, including that she pay fines and fees totaling \$170. The court also ordered Respondent to serve 20 days in jail with credit for 20 days served and to complete 30 days of community service. Respondent completed probation, community service and paid all fines and fees.

4. The facts and circumstances underlying Respondent's criminal conviction occurred when Respondent was a student at Long Beach City College in 2007. Respondent purchased her college books from other students. In 2009, she resold one of the books back to the college bookstore for \$50. It was later determined that the book had been originally stolen from the bookstore. Respondent did not intentionally sell a stolen book to the bookstore. She did not know the book was stolen.

5. Respondent explained the circumstances underlying her criminal conviction. In 2009, she was living with her mother. Their home was foreclosed. Respondent's mother went to live with a relative. Respondent moved frequently, renting rooms in private homes and hotels. She had to quit college and sell her books. Unbeknownst to her, the college bookstore had written Respondent a letter telling her that one of the books she had sold them was stolen. She owed the bookstore \$50. Respondent never received the letter from the bookstore. While she was in court paying a traffic ticket, Respondent was arrested on an outstanding warrant regarding the stolen book.

6. Paula Arroyo, Respondent's mother testified on her daughter's behalf. Arroyo has been a licensed real estate salesperson since 1987. She is employed at Property Masters Realty in Glendale. Arroyo corroborated Respondent's testimony. They had lost their home. Consequently, Respondent had to move several times. Arroyo said her daughter's mail did not reach her due to Respondent's constant moving.

7. Respondent is not employed in the real estate field. Since 2009, she has been employed at Universal Studios as assistant lead sales associate. Her duties include assisting guests, sales and participating in special events. Respondent has received recognition from Universal such as a recipient of multiple Team Member of the Month and Best Sales Associate awards.

8. Respondent is involved in community activities. She participates in West Hollywood Pride Festivals and in programs to feed the homeless.

9. Respondent obtained her real estate salesperson's license in 2007. She is determined to become a real estate salesperson. Respondent is interested in working with her mother selling real estate in the future.

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LEGAL CONCLUSIONS AND DISCUSSION

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Under Business and Professions Code section 10177, subdivision (b), a real estate licensee may have her license disciplined for conviction of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee.

3. Under Business and Professions Code section 490, the Bureau 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.”

4. Under California Code of Regulations (CCR), title 10, section 2910, subdivision, (a)(1), “the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person,” bears a substantial relationship to the functions, duties and qualifications of a Bureau licensee.

5. The act for which Respondent was convicted (petty theft with a prior) is a crime which falls under CCR, title 10, section 2910, subdivision (a)(1).

6. Cause exists to impose discipline on Respondent’s real estate salesperson license pursuant to Business and Professions Code section 490 and section 10177, subdivision (b), because Respondent has been convicted of a crime which is substantially related to the qualifications, functions, or duties of a real estate salesperson, as set forth in Factual Findings 3 and 4.

7. Business and Professions Code section 493 provides that the Bureau may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline. In this case, it appears there was minor misunderstanding which developed into a criminal conviction. Respondent unknowingly purchased a stolen book from another student. She sold it to the college bookstore. Respondent did not intentionally sell a stolen book to the bookstore. Unfortunately, she was not notified that she owed the bookstore \$50.00 due to circumstances beyond her control.

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8. Although cause for discipline exists, it is necessary to determine whether Respondent has been sufficiently rehabilitated to warrant her continued licensure. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

9. The Bureau has established criteria for rehabilitation from a conviction of a crime to warrant continued licensure. The criteria, found at CCR, title 10, section 2912, are summarized as follows:

- Subdivision (a), passage of at least 2 years since the conviction or the underlying acts;
- Subdivision (b), restitution;
- Subdivision (c), expungement of the conviction;
- Subdivision (d), expungement of the requirement to register as a sex offender;
- Subdivision (e), completion of, or early discharge from, the criminal probation;
- Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
- Subdivision (g), payment of any criminal fines or penalties;
- Subdivision (h), correction of business practices causing injury;
- Subdivision (i), new and different social and business relationships;
- Subdivision (j), stability of family life;
- Subdivision (k), enrollment in or completion of educational or training courses;
- Subdivision (l), significant involvement in community, church or private programs for social betterment; and
- Subdivision (m), change in attitude from the time of conviction to the present, evidenced by: testimony of the licensee and others, including family members, friends or others familiar with her previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

10. Respondent provided some evidence of rehabilitation. Five years have passed since she committed the misconduct for which she was convicted. Respondent's criminal conviction was four years ago. She has completed her probation and paid all court ordered fines and fees and court ordered community service. Respondent has a stable family life. Under all of the circumstances the public will be adequately protected by restricting Respondent's license for two years.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent Michelle Maria Paula Smith under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Business and Professions Code section 10156.5, if Respondent makes application therefore and pays to the Bureau 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 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 license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by 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 the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

2. 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 two years have elapsed from the date of issuance of the restricted license to Respondent.

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 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.

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4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of 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.

DATED: June 20, 2014



GLORIA A. BARRIOS
Administrative Law Judge
Office of Administrative Hearings

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JUN 23 2014
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