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SEP 23 2014

BUREAU OF REAL ESTATE

BEFORE THE BUREAU OF REAL ESTATE *By* Michael Danner

STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-39241 LA
)	
SUSANA LORENA VIRREY-ZAPIEN,)	OAH No. 2014010828
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated August 6, 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.

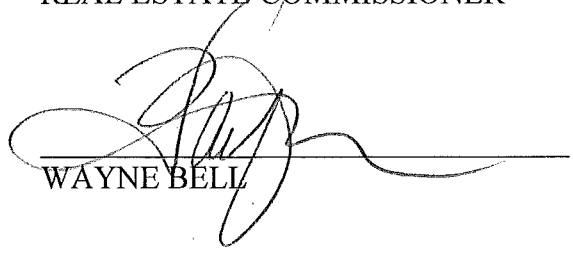
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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 13 2014.

IT IS SO ORDERED 9/14/2014.

REAL ESTATE COMMISSIONER



WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

SUSANA LORENA VIRREY-ZAPIEN,

Respondent.

Case No. H-39241 LA

OAH No. 2014010828

PROPOSED DECISION

This matter came on regularly for hearing before Felix W. Loya, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on July 16, 2014. Julie To, Staff Counsel, represented complainant Robin Trujillo, Deputy Real Estate Commissioner (complainant). Respondent Susana Lorena Virrey-Zapien (respondent) appeared and represented herself at the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 16, 2014. The Administrative Law Judge makes the following factual findings, legal conclusions and order:

FACTUAL FINDINGS

Jurisdiction and Parties

1. Robin Trujillo filed the Accusation in her official capacity as a Deputy Real Estate Commissioner of the Bureau of Real Estate of the Department of Consumer Affairs of the State of California (the Bureau).

2. Respondent holds real estate salesperson license no. 01848268, issued by the Bureau on August 22, 2008 and renewed on August 22, 2012, due to expire on August 21, 2016, unless renewed.

3. On December 31, 2013, the Bureau filed an Accusation against respondent. On January 14, 2014, respondent submitted a Notice of Defense to the Accusation. The instant hearing ensued. Jurisdiction exists in this proceeding.

False Personation Conviction

4. On June 20, 2012, in the Superior Court of California, County of Los Angeles, Case No. SA080335, respondent pled guilty to one count of violating Penal Code section 529, subdivision (2). By that plea, respondent was convicted of falsely personating another by verifying, publishing, acknowledging, or proving, in the name of another person, a written instrument with the intent that the instrument be recorded, delivered or used as true, a felony.

5. On June 20, 2012, the court suspended respondent's sentencing and placed her on formal probation under certain terms and conditions for three years. The terms and conditions of respondent's formal probation included serving two days in jail less one day for time served and one day for good conduct for a total of two days' credit and paying fines and fees totaling \$310 plus the costs of probation services in the amount the probation officer prescribed. Respondent was also ordered to pay a probation revocation restitution fine of \$240, which fine was effective upon the revocation of probation. In addition, respondent was ordered to perform 30 days of community service, to obey all laws, and to seek and maintain training, schooling or employment as approved by the probation officer. The costs of probation services exceeded \$3,000. Respondent completed the community service and filed proof of her completion with the court on May 3, 2013. At the time of the administrative hearing, respondent was still paying the fines, fees and costs of probation services at the rate of \$40 per month. Respondent's probation is scheduled to end in June 2015.

6. The facts and circumstances of Respondent's conviction were that, before 2007, respondent signed and submitted an application to the Department of Motor Vehicles to renew her sister's California driver's license. Respondent's sister was out of the country and was not scheduled to return until after the expiration date of her driver's license and asked respondent to renew the driver's license for her. Respondent signed her sister's name on the renewal application and attempted to mimic her sister's signature in doing so. Respondent had her own driver's license at the time.

Failure To Disclose

7. Respondent did not notify the Bureau of the June 20, 2012 conviction until October 22, 2012, more than 30 days after respondent was convicted. Respondent provided the notice to the Bureau when she completed a conviction detail report as part of a confidential interview information statement at a Bureau investigator's request.

Rehabilitation and Aggravation Factors

8. The following factors indicate mitigation or rehabilitation:
 - a. Respondent has a stable family life with her husband and two very young children.

- b. Respondent has no other convictions.
- c. Respondent is involved in church activities. (Exhibit 4.)
- d. Respondent believed that she was not obligated to disclose the conviction until her probation had been completed.

9. The following are factors in aggravation:

a. In the conviction detail report respondent submitted to the Bureau with her confidential interview information statement, respondent did not disclose that she had signed her sister's name in an earlier driver's license renewal. Instead, respondent simply said that she had not disclosed that she had a previously issued driver's license under another name. Respondent lied to the Bureau in the conviction detail report.

b. At the hearing, respondent did not express an understanding that her action, in signing the renewal application under another person's name, was illegal. She justified it on the ground that her sister had authorized her to sign and submit the application in her sister's name.

c. Respondent is still in contact with her sister and offered no change in her circumstances from the time that she committed the acts that led to her conviction.

10. Complainant did not offer any evidence in support of her prayer for costs.

LEGAL CONCLUSIONS

1. Cause exists to revoke respondent's real estate salesperson license for her false personation conviction based on Factual Findings 4 through 6. The Bureau may revoke a real estate salesperson license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code,¹ §§ 490, subd. (a), and 10177, subd. (b).) Respondent's false personation offense is substantially related to the qualifications, functions and duties of a licensee because it involved counterfeiting, forging or altering of an instrument. (Cal. Code Regs., tit. 10,² § 2910, subd. (a)(2).)

2. Cause exists to revoke respondent's real estate salesperson license for her

¹ All further references to the Business and Professions Code are cited by section number.

² Further references to California Code of Regulations, title 10, are cited as CCR.

failure to report her June 20, 2012 conviction to the Bureau in writing within 30 days of the date of her conviction in accordance with section 10186.2, subdivisions (a)(1) and (2), based on Factual Findings 4 through 7. Pursuant to section 10177, subdivision (d), the Bureau may revoke a license if the licensee willfully disregards or violates the Real Estate Law (Part 1, commencing with section 10000), which includes section 10186.2. "In statutory offenses 'willfully' implies only a willingness to commit the act, unless otherwise apparent from the context of the statute." *Pittenger v. Collection Agency Licensing Bureau* (1962) 208 Cal.App.2d 585,588. "Disciplinary procedures provided for in the Business and Professions Code, such as section 10177, subdivision (d), are to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman." *Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518. Respondent did not notify the Bureau timely, which failure constituted a willful violation of section 10186.2.

3. The Bureau has established criteria for evaluating rehabilitation of a licensee in a disciplinary proceeding based upon conviction of a crime, found at CCR section 2912. Respondent has not satisfied most of the relevant criteria, which are summarized as follows:

- a. Subdivision (a), requiring the passage of at least two years since the conviction, or more if there is a history of unlawful acts, is satisfied here. Respondent's conviction occurred just over two years ago. (Factual Findings 4-6.)
- b. Subdivision (c), expungement of the conviction, has not been met.
- c. Subdivision (e), requiring completion of the criminal probation has not been met, as respondent will not complete probation until June 2015. (Factual Findings 4-6.)
- d. Subdivision (g), payment of any fines, is not met here, as respondent is still paying the amounts she was ordered to pay. (Factual Findings 4-6.)
- e. Subdivision (i), new and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction, is not met here, as respondent is still in contact with her sister. (Factual Finding 9.)
- f. Subdivision (j), stability of family life and fulfillment of parental responsibility, is satisfied here. (Factual Finding 8.)
- g. Subdivision (k), completion of sustained enrollment in formal educational or vocational training courses for economic self-improvement, is not satisfied here.

h. Subdivision (l), involvement in community, church, or private programs for social betterment, is satisfied here. (Factual Finding 8.)

i. Subdivision (m), change in attitude from the time of conviction to the present, is not satisfied here, as respondent did not express an understanding that her action, in signing the renewal application under another person's name, was illegal. (Factual Findings 4-6 and 8.)

4. The factors set forth in Legal Conclusion 3 indicate that, although it is highly unlikely respondent will commit her misconduct again, respondent has still not fully rehabilitated. Respondent has not met most of the criteria for rehabilitation set forth in CCR section 2912. Overall, respondent has not shown that she is rehabilitated from her criminal conduct. Considering the totality of the circumstances in this matter, it would not be in the public interest for respondent to retain her license.

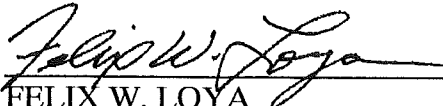
5. The Bureau did not carry its burden of proof on its claim for cost recovery.

ORDER

1. Respondent Susana Lorena Virrey-Zapien's real estate salesperson license number 01848268 is revoked.

2. Complainant's request for cost recovery is denied.

DATED: August 6, 2014


FELIX W. LOYA
Administrative Law Judge
Office of Administrative Hearings