

FILED

OCT 30 2014

BEFORE THE BUREAU OF REAL ESTATE

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

By *Erin Manner*

* * * *

In the Matter of the Accusation of) CalBRE No. H-39300 LA
DIANNE SUE HOFFMAN,) OAH No. 2014020908
Respondent.)
_____)

DECISION

The Proposed Decision dated September 19, 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.

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 NOV 19 2014.

IT IS SO ORDERED 10/23/2014.

REAL ESTATE COMMISSIONER

Wayne S. Bell
WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DIANNE SUE HOFFMAN,

Respondent.

Case No. H-39300 LA

OAH No. 2014020908

PROPOSED DECISION

This matter was heard on August 20, 2014, in Los Angeles, by Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings.

Diane Sue Hoffman (respondent) was present and represented herself.

Veronica Kilpatrick, a Deputy Real Estate Commissioner (complainant), of the Bureau of Real Estate (Bureau), was represented by Julie To, Counsel for the Bureau.

The matter was submitted for decision on August 20, 2014.

FACTUAL FINDINGS

1. On January 10, 2014, complainant filed an Accusation against respondent in her official capacity. Respondent is also known as Diane Hoffman, Dianne Recotta, Dianne Rear, or Dianne Goodwin.

2. On February 24, 2014, respondent filed a Notice of Defense, requesting a hearing.

3A. On April 8, 2002, the Bureau issued real estate salesperson license number 01333709 (license) to respondent. On April 7, 2014, respondent's license expired, but her license was active at all times relevant to the allegations stated in the Accusation.

3B. On April 6, 2014, respondent attempted to renew her license on the internet, but she was unable to so using the Bureau's online program because of the pending Accusation. While respondent's license is expired, respondent retains licensing rights under

Business and Professions Code, Division 4, Part 1 (Real Estate Law). Under Business and Professions Code section 10103, the Bureau has jurisdiction to proceed with this disciplinary matter despite the expiration of respondent's license.

4A. On February 14, 2013, respondent was convicted in the Superior Court of California, County of Riverside, in case number SWF1101326, upon her plea of guilty, of violating Penal Code sections 503 (embezzlement) and 530.5, subdivision (a) (willfully obtaining another person's identity for an unlawful purpose), both misdemeanor crimes¹ which are substantially related to the qualifications, functions, or duties of a real estate licensee, for the reasons set forth in legal conclusions 2A and 2B. Respondent was sentenced to three years' summary probation under certain terms and conditions which included that respondent serve 118 days in a work release program and two days in jail (with credit given for two days previously served), pay fines, and pay restitution to the victims in the amount of \$17,861.65.²

4B. The underlying facts and circumstances leading to respondent's conviction occurred while respondent was employed by Special T. Thoroughbreds (ST), a horse racing business owned by Mr. and Mrs. Taylor (Taylors). Respondent was hired as a bookkeeper in March 2008 and she was terminated in August 2010. Respondent was given access to ST's financial information, checking accounts, and credit cards, so that she could process payroll, bills, and deposits. Respondent prepared and deposited ST paychecks for herself, which were for larger amounts than was justified by her hourly wage. Respondent was given two ST credit cards, which had her name on the front, and respondent was told that she could make small business purchases with the cards, such as office supplies. Thereafter, respondent used her ST credit cards on multiple occasions to make unauthorized purchases of personal items. Respondent then used ST funds to pay the credit card bills. Respondent also used another ST credit card, which had Mrs. Taylor's name on the front, to purchase healthcare products for herself. Respondent used that credit card without Mrs. Taylor's knowledge or authorization.

4C. Two weeks after respondent was terminated from ST, a police officer came to respondent's house to investigate the Taylor's accusations of embezzlement against respondent. Respondent told the police officer that she would produce exculpatory evidence at a later date, but she failed to provide any evidence.

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¹ A felony criminal complaint was initially filed against respondent, but the crimes for which she was convicted were reduced to misdemeanors as part of her plea agreement.

² Respondent was arrested in September 2010 and pleaded guilty in approximately September 2012. In December 2012, respondent requested that she be allowed to withdraw her guilty plea. Respondent's request was denied and respondent appealed that ruling. While the matter was on appeal, respondent paid \$17,861.65 to the Taylors in restitution. Respondent's appeal was later denied and she was sentenced on February 14, 2013.

5A. Respondent contended that ST was a failing business and that the Taylors were looking for someone to blame for their financial mistakes. Respondent denied preparing and depositing ST paychecks into her personal bank account for amounts which she had not legitimately earned. Respondent denied using her ST credit card to pay for personal expenses. Respondent initially testified that she did not commit any crime and that all of the financial transactions she performed were done so with the permission of the Taylors. However, respondent later testified and acknowledged that she had failed to obtain approval for some personal expenses, such as her Bureau license renewal fee, which she charged to her ST credit card.

5B. Respondent's claims of innocence are not persuasive and do not mitigate or excuse her crimes. The issue of Respondent's guilt may not be re-litigated. Respondent's entry of guilty pleas in her criminal case is conclusive evidence of guilt upon which the administrative law judge must rely. (*Arneson v. Fox* (1980) 28 Cal.3d 440.)

6. Respondent was recently employed as a real estate salesperson by Makenna and Company (Makenna), where she worked in the property management division, until her license expired on April 7, 2014.

7. Since her conviction, respondent has worked in her community. She is the president of her local Rotary Club and is also involved in RYLA, a youth leadership group. Respondent has mentored two high school students, is a member of her church, has served as a director for the Southwest Riverside County Board of Realtors, and has volunteered at the Salvation Army and Habitat for Humanity. She also attended "Realtor Institute," a six-month volunteer program for which she paid \$1500.00 to attend.

8. Respondent's sister and two friends testified on behalf of respondent. They believe respondent is trustworthy and professional. Stephen Lindsley is a member of the Rotary Club where he met respondent. Respondent has direct access to Rotary Club finances because of fund-raising work as president. Mr. Lindsley believes respondent can be trusted with Rotary Club funds.

9. On April 3, 2013, the Secretary of State of the State of California, in case number 2012-0578-AD, issued a default decision which revoked respondent's appointment as a notary public, commission number 1935053, for violating Government Code section 8214.1, subdivision (b), based on her conviction, set forth in factual finding 4A - 4C. Respondent received notice of hearing date and was not present on the day of hearing.

10. Complainant submitted declarations (exhibit 7) in support of her request that respondent be ordered to pay \$1,328.40 as reimbursement for the Bureau's costs of investigation and enforcement in this matter. Complainant's request is reasonable, as is the amount of the costs incurred.

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LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's real estate salesperson license and her licensing rights, under Business and Professions Code sections 490 and 10177, subdivision (b), because she was convicted of crimes which are substantially related to the qualifications, functions, or duties of a real estate licensee, as discussed in Legal Conclusion 2A. (Factual Findings 4A-4C.)

2A. California Code of Regulations, title 10, section 2910, defines which crimes are substantially related to the qualifications, functions, or duties of a licensee, within the meaning of Business and Professions Code section 490, and therefore may be considered in determining whether respondent's license should be revoked or suspended.

2B. California Code of Regulations, title 10, section 2910 states, in pertinent part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau within the meaning of Sections 480 and 490 of the Code if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

(2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

(8) Doing of any unlawful act 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.

2C. Respondent's convictions for embezzlement and willfully obtaining another person's identity for an unlawful purpose are substantially related to the qualifications, functions, or duties of a licensee under California Code of Regulations, title 10, section 2910 subdivision (a), subsections (1), (2), (4), and (8), as set forth in Factual Findings 4A-4C.

3. Cause exists to suspend or revoke respondent's real estate salesperson license and her licensing rights, under Business and Professions Code section 10177, subdivision (f), because respondent previously held a license issued by another state agency, which was revoked for acts which, if done by a real estate licensee would be grounds for discipline. The

Secretary of State, a State agency, previously revoked respondent's license because of the acts leading to her conviction, as set forth in factual findings 4, 5, and 9.

4. Criteria have been developed by the Bureau, pursuant to Business and Professions Code section 482, subdivision (b), for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of a license has been initiated on account of a crime committed by the licensee. These criteria, found at California Code of Regulations, section 2912, are summarized as follows:

- Subsection (a) passage of at least two years since the conviction;
- Subsection (b) restitution;
- Subsection (c) expungement of the conviction;
- Subsection (d) expungement of the requirement to register as an offender;
- Subsection (e) completion of the criminal probation;
- Subsection (f) abstinence from drugs or alcohol that contributed to the crime;
- Subsection (g) payment of any criminal fines or penalties;
- Subsection (h) correction of business practices;
- Subsection (i) new and different social and business relationships;
- Subsection (j) stability of family life;
- Subsection (k) completion of, or sustained enrollment in, formal educational or vocational training;
- Subsection (l) significant involvement in community, church or private programs for social betterment;
- Subsection (m) change in attitude from the time of conviction to the present, evidenced by testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns.

5A. A real estate licensee's functions and duties necessarily require that the person be honest, of good character, and trustworthy. Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. A licensed real estate salesperson has access to consumers' financial information and such access can be misused if the licensee is not honest and trustworthy. If an applicant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate licensee. (*Golde v. Fox* (1979) 98 Cal.App.3d 176.) Respondent's convictions for embezzlement and willfully obtaining another person's identity for an unlawful purpose were due to respondent's dishonest and criminal conduct which she committed at her place of employment. (Factual Findings 4-5.)

5B. Respondent was convicted in February 2013 and will be on criminal probation until February 2016. Two years have not passed since her convictions. While she has paid restitution and is involved in the community, respondent did not express remorse for her convictions and she continues to assert her innocence. Respondent has not accepted that she has been convicted of two crimes. She failed to establish that she has not had a change in

attitude since her convictions. Respondent did not establish that she is sufficiently rehabilitated to justify allowing respondent to remain licensed. Respondent's convictions require the following order to protect the public health, safety, and welfare (Factual Findings 3-9; Legal Conclusions 1-5A.)

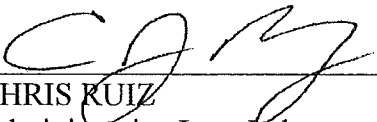
6. Cause exists to order respondent to pay the Bureau's incurred costs of the investigation and enforcement in this case, under Business and Professions Code section 10106, because respondent committed violations of the Real Estate Law. The reasonable costs of investigation and prosecution of this case are \$1,328.40. (Factual Finding 10, Legal Conclusions 1-5.)

ORDER

1. Dianne Sue Hoffman's real estate salesperson license number 01333709, and all licensing rights, are revoked.

2. Dianne Sue Hoffman shall pay costs to the Bureau in the amount of \$1,328.40 before such time as she applies for a license or files a petition for reinstatement. Respondent may request a payment schedule from the Bureau at that time and the Bureau shall have the discretion to implement a payment schedule.

DATED: September 19, 2014.


CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings