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FILED

AUG 06 2019

DEPT. OF REAL ESTATE

By R. Posalla

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

CLAUDIA MIREYA HERNANDEZ,

a.k.a. Claudia Sophia Hernandez,

Respondent.

No. H-39671 LA

ORDER DENYING REINSTATEMENT OF LICENSE
BUT GRANTING RIGHT TO A RESTRICTED LICENSE

On July 16, 2015, in Case No. H-39671 LA, a Decision was rendered revoking the real estate salesperson license of Respondent effective August 13, 2015. On August 12, 2015, the effective date of the revocation was stayed by separate order to September 14, 2015.

On October 17, 2018, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

1 I have considered Respondent's petition and the evidence submitted in support
2 thereof.

3 The Department has developed criteria in Section 2911 of Title 10, California
4 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
5 reinstatement of a license. Among the criteria relevant in this proceeding are:

6
7 **2911. Criteria for Rehabilitation (Denial)**

8 (a) (1) *The time that has elapsed since commission of the acts(s) or offense(s):*
9 (A) *The passage of less than two years after the most recent criminal conviction*
10 *or act of the applicant that is a cause of action in the Bureau's Statement of Issues*
11 *against the applicant is inadequate to demonstrate rehabilitation.*

12 (B) *Notwithstanding subdivision (a)(1)(A), above, the two year period may be*
13 *increased based upon consideration of the following:*

14 (i) *The nature and severity of the crime(s) and/or act(s) committed by the*
15 *Applicant.*

16 Respondent's license was revoked after an administrative law judge determined
17 that Respondent committed fraudulent acts in a real estate transaction. Furthermore, the judge
18 held that Respondent did not acknowledge her dishonesty at hearing and only paid restitution
19 when the victim filed a complaint in small claims court. Therefore, the nature and severity of
20 the acts of Respondent require more time to demonstrate full rehabilitation.

21 (a) (14) *Change in attitude from that which existed at the time of the conduct in*
22 *question as evidenced by the following:*

23 (A) *Testimony and/or other evidence of rehabilitation submitted by the applicant.*

24 In a February 11, 2019 interview with a Department of Real Estate investigator,
25 Respondent still failed to fully acknowledge her dishonesty in the real estate transaction which
26 led to revocation. Instead, she blamed the victim for misunderstanding the nature of the
27 transaction.

28 Respondent has failed to demonstrate to my satisfaction that Respondent has
29 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real
30 estate salesperson license.

31 I am satisfied, however, that it will not be against the public interest to issue a
32 restricted real estate salesperson license to Respondent.

33 A restricted real estate salesperson license shall be issued to Respondent pursuant
34 to Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following

1 conditions prior to and as a condition of obtaining a restricted real estate salesperson license
2 within twelve (12) months from the effective date of this Order:

- 3 1. Submits a completed application and pays the fee for a real estate
4 salesperson license within the 12 month period following the effective date of this Order; and
- 5 2. Submits proof that Respondent has completed the continuing education
6 requirements for renewal of the license sought. The continuing education courses must be
7 completed either (i) within the 12 month period preceding the filing of the completed
8 application, or (ii) within the 12 month period following the effective date of this Order.

9 The restricted license issued to Respondent shall be subject to all of the provisions
10 of Section 10156.7 of the Business and Professions Code and to the following limitations,
11 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

12 A. The restricted license issued to Respondent may be suspended prior to
13 hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or
14 plea of nolo contendere to a crime which is substantially related to Respondent's fitness or
15 capacity as a real estate licensee.

16 B. The restricted license issued to Respondent may be suspended prior to
17 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner
18 that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
19 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
20 license.

21 C. Respondent shall not be eligible to apply for the issuance of an
22 unrestricted real estate license nor the removal of any of the limitations, conditions or restrictions
23 of a restricted license until two (2) years have elapsed from the date of the issuance of the
24 restricted license to Respondent.

25 D. Respondent shall submit with any application for license under an
26 employing broker, or any application for transfer to a new employing broker, a statement signed
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1 by the prospective employing real estate broker on a form approved by the Department of Real
2 Estate which shall certify:

3 1. That the employing broker has read the Decision of the Commissioner
4 which granted the right to a restricted license; and

5 2. That the employing broker will exercise close supervision over the
6 performance by the restricted licensee relating to activities for which a real estate license is
7 required.

8 E. Respondent shall notify the Commissioner in writing within 72 hours of
9 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate,
10 Post Office Box 137007, Sacramento, CA 95813-7007. The letter shall set forth the date of
11 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
12 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
13 constitute an independent violation of the terms of the restricted license and shall be grounds for
14 the suspension or revocation of that license.

15 This Order shall become effective at 12 o'clock noon on AUG 26 2019.

16 IT IS SO ORDERED July 30, 2019

17 DANIEL J. SANDRI
18 ACTING REAL ESTATE COMMISSIONER

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