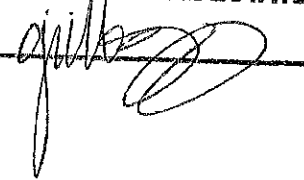


FILED

MAY 17 2016

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	}	CalBRE No. H-39936 LA
NANCY GEORGINA RAMOS,		OAH No. 2015090186
Respondent.		

DECISION

The Proposed Decision dated April 4, 2016 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Caption, Page 1, "OAH No. 2015090002" is amended to read "OAH No. 2015090186".

Legal Conclusions, Page 4, Paragraph No. 3, Section d, Line 1, "fulfilled of parental" is amended to read "fulfilled parental".

Order, Page 5, Paragraph No. 5, Line 3, "Box 137000, and Sacramento, CA 95818-7000" is amended to read "Box 137013, Sacramento, CA 95813-7013".

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 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 JUN - 6 2016.

IT IS SO ORDERED 5/9/2016

REAL ESTATE COMMISSIONER

A handwritten signature in black ink, appearing to read "Wayne S. Bell", is written over a horizontal line. The signature is stylized and cursive.

WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation of:

NANCY GEORGINA RAMOS,

Respondent.

Case No. H-39936 LA

OAH No. 2015090002

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on March 8, 2016.

Judith Vasan, Staff Counsel, represented Complainant Maria Suarez, a Supervising Special Investigator of the State of California.

Respondent Nancy Georgina Ramos represented herself.

Oral and documentary evidence was received at the hearing, and the matter was submitted March 8, 2016.

Complainant brings this First Amended Accusation to revoke Respondent's real estate salesperson license. For the reasons set out below, the license is revoked, but a restricted salesperson license is granted.

FACTUAL FINDINGS

1. Complainant issued the First Amended Accusation solely in her official capacity.
2. Respondent was granted a real estate salesperson license on November 16, 2006. It was last renewed in 2014 and expires November 15, 2018. On August 11, 2015, Complainant brought an Accusation to discipline her license. Respondent timely requested a hearing. On September 2, 2015, Complainant filed this First Amended Accusation.

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Criminal Conviction

3. On June 17, 2013, in the Superior Court of California, Riverside County, case number RIF1300483, Respondent was convicted on her guilty plea of shoplifting (Pen. Code, § 459.5), a misdemeanor. The only evidence about the offense is Respondent's statements and hearing testimony to the effect that she stole a bottle of champagne from a Bevmo store, and the note in the court minutes that the offense occurred November 11, 2012. Respondent was sentenced to 180 days in the Riverside County Sheriff's work release program, with credit for two days served, fined \$730.34, ordered to pay \$110 in restitution to the victim, and placed on three years of formal probation.

Mitigation, Aggravation and Rehabilitation

4. On December 14, 2011, in the Superior Court of California, Riverside County, case number RIF1300483, Respondent was convicted on her guilty plea of petty theft, a misdemeanor.¹ The conviction was based on a shoplifting incident on October 12, 2011. She was fined \$500, ordered to complete 20 hours community service, and placed on probation for three years.

5. Because Respondent was still on probation for her 2011 conviction when she was convicted in 2013, the sentence for her 2013 conviction was harsher than most misdemeanor theft sentences. She served 178 days in work release under electronic monitoring. When Respondent met the terms of her sentence and probation, the judge who had imposed the sentence terminated her probation at least 19 months early on November 24, 2014. (Respondent believes it was terminated 25 months early, assuming that her probation began in December 2013, when she finished the work release part of her sentence, and would normally have ended in December 2016. Nothing in the record contradicts her understanding.) The conviction has not been expunged under Penal Code section 1203.4.

6. Respondent is 41 years old. She has a 21-year-old son who is a junior at UC Santa Barbara. Respondent expressed both regret that she has not set a better example for him and resolve to do better.

7. Respondent has worked under the broker license of her stepfather, Antonio Rios, for the nine years she has been a real estate licensee. Rios is the designated officer of Diamond Real Estate Group, Inc. in Menifee. He has served on the ethics committee of the local realty association. He has had "many discussions" with Respondent about the convictions and the importance of conduct, and believes the second shoplifting conviction was a "wakeup call" for her. He will personally supervise her if she retains her license.

¹ The Accusation alleges a conviction under Penal Code section 490.5, probably because 490.5 was the section number Respondent gave when she disclosed the conviction in her 2014 license renewal application, and there is no evidence of the conviction other than Respondent's statements. Section 490.5 establishes some criminal penalties and rights to restitution in petty theft cases, but the offense of petty theft is set out in Penal Code sections 484-488.

8. Respondent has no history of discipline or consumer complaints in her nine years as a licensee. Complainant's exhibit 5 included four letters of recommendation from clients who praised her dedication, energy, and willingness to make extraordinary efforts and handle unusually difficult situations. Respondent is not now working full time as a real estate salesperson because she does not want to promote her services as a sales agent while this disciplinary proceeding is pending, and has closed "maybe three deals" since her 2013 conviction. She also works as a property manager.

9. Respondent runs several Internet projects. One is Menifee Talk, a Facebook community chat/news site for the city of Menifee, which she started in 2014 and runs as a community service. Another is a site promoting Temecula Wine Country tourism, with which she intends to earn money from advertising fees and promote commerce in the area. She is an "ambassador" with the Menifee Chamber of Commerce, a volunteer position in which she represents the Chamber of Commerce at social and business events.

Costs

10. Complainant incurred investigative costs of \$1,311, \$1,271 of which consisted of 20.5 hours Bureau investigator Greg Eaddy's time at \$62 per hour. Complainant also incurred \$480.60 in costs of enforcement, consisting of 5.4 hours of staff attorney Judith Vasan's time at \$89 per hour. These costs, totaling \$1,791.60, are reasonable.

LEGAL CONCLUSIONS

1. Complainant has the burden of establishing cause for license discipline by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505; *Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

2. As paragraph 5 of the First Amended Accusation alleges, there is cause to revoke or suspend Respondent's license under Business and Professions Code sections 490 and 10177, subdivision (b).² Section 490, subdivision (a), allows a board to revoke a license if the licensee "has been convicted of a crime . . . 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 (Factual Finding 3) is substantially related because it is an "unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator." (CCR § 2910, subd. (a)(8).)

² Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to title 10 of the California Code of Regulations.

3. Respondent has the burden of showing rehabilitation from her conviction. (*Martin v. Alcoholic Beverage Appeals Board* (1959) 52 Cal.2d 259.) She meets some relevant criteria of rehabilitation in the Bureau's regulations:

a. More than two years have passed since her conviction. (Factual Finding 5; CCR § 2912, subd. (a).)

b. Respondent paid the fine. (CCR § 2912, subd. (g); Factual Finding 5.)

c. Respondent has completed probation (CCR § 2912, subd. (e); Factual Finding 5), but the conviction has not been expunged under Penal Code section 1203.4. (CCR § 2912, subd. (c); Factual Finding 5)

d. She has fulfilled of parental and familial responsibilities since the conviction. (CCR § 2912, subd. (e); Factual Finding 6).)

e. Her community Internet activities (Factual Finding 9) may not amount to "[s]ignificant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems" (CCR § 2912, subd. (l)), but she has shown involvement in community affairs.

f. She has shown a change in attitude from that which existed at the time of the crime (CCR § 2912, subd. (m)), admitting responsibility for her act. (Factual Finding 5.)

4. Respondent's conviction is cause for discipline, but her unblemished history as a licensee (Factual Finding 8) is a strong mitigating circumstance and her early completion of probation (Factual finding 5) is a strong indication of rehabilitation. Concerns about her fitness are best addressed by restricting her license.

5. As paragraph 5 of the Accusation alleges, the Bureau is entitled, under section 10106, to have Respondent pay reasonable costs of investigation and enforcement. The Bureau's request for \$1,791.60 in costs is reasonable. (Factual Finding 10.)

ORDER

Respondent Nancy Georgina Ramos's license and licensing rights under the Real Estate Law³ are revoked; but a restricted real estate salesperson license shall be issued under Business and Professions Code section 10156.5 if Respondent applies for and pays to the Bureau the appropriate fee for the restricted license within 90 days from this Decision's effective date. The restricted license shall be subject to the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under section 10156.6 of that Code:

³ Section 10000 et seq.

1. The Real Estate Commissioner may suspend the restricted license if Respondent is convicted or pleads nolo contendere to a crime substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license may be suspended before hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated 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 three years after this Decision's effective date.

4. Within nine months from this Decision's effective date, Respondent shall 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 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 137000, and Sacramento, CA 95818-7000. The letter shall state the arrest date, 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 be grounds to suspend or revoke that license.

6. Respondent shall submit with any application for license under a real estate employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing broker, on a form approved by the Bureau of Real Estate, certifying:

(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 restricted licensee relating to activities for which a real estate license is required.

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7. Within one year of this Decision's effective date, Respondent shall pay the Bureau \$1,791.60 for its costs of investigation and enforcement.

DATED: April 4, 2016

DocuSigned by:
Howard Posner
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HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings