

1 Bureau of Real Estate
320 West 4th Street, Suite 350
2 Los Angeles, CA 90013-1105
3 Telephone: (213) 576-6982

FILED

APR 26 2016

BUREAU OF REAL ESTATE

By *Sybil Steiner*

7 BEFORE THE BUREAU OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Application of)
11 MARINE TER-HAROUTUNIAN,) BRE No. H-39984 LA
12) OAH No. 2015110044
13 Respondent.)
14 _____)

15 STIPULATION AND WAIVER AND DECISION AFTER REJECTION

16 I, Marine Ter-Haroutunian, ("Respondent") represented by my attorney, Enna
17 Berjikian, Esq., acknowledge that I have received and read the Statement of Issues filed by the
18 Bureau of Real Estate on October 7, 2015 and the Statement to Respondent sent to me in
19 connection with the Statement of Issues.

20 I hereby admit that the allegations contained in the Statement of Issues filed
21 against me are true and correct, and constitute a basis for the denial of my real estate salesperson
22 license application.

23 I further acknowledge that the Real Estate Commissioner held a hearing on this
24 Statement of Issues on December 22, 2015, before the Office of Administrative Hearings for the
25 purpose of proving the allegations therein. I was present at the hearing and was represented by
26 my attorney, Enna Berjikian, Esq. Further, I have had an opportunity to read and review the
27 Proposed Decision of the Administrative Law Judge.

1 I understand that pursuant to California Government Code section 11517(c), the
2 Real Estate Commissioner has rejected the Proposed Decision of the Administrative Law Judge.
3 I further understand that pursuant to the California Government Code section 11517(c), the Real
4 Estate Commissioner may decide this case upon the record, including the transcript, without
5 taking any additional evidence, after affording me the opportunity to present written argument to
6 the Real Estate Commissioner.

7 I further understand that by signing this Stipulation and Waiver, I am waiving my
8 right to obtain a dismissal of the Statement of Issues through proceedings under California
9 Government Code section 11517(c) if this Stipulation and Waiver is accepted by the Real Estate
10 Commissioner. However, I also understand that I am not waiving my rights to further
11 proceedings to obtain a dismissal of the Statement of Issues if this Stipulation and Waiver is not
12 accepted by the Real Estate Commissioner.

13 I hereby request that the Real Estate Commissioner in his discretion deny my
14 application for a real estate salesperson license and issue to me a restricted real estate salesperson
15 license under the authority of California Business and Professions Code section 10156.5 if I
16 make application therefor and pay to the Bureau of Real Estate the appropriate fee for said
17 license within 90 days from the effective date of the Decision herein.

18 I further understand that the restricted license shall be subject to the provisions of
19 California Business and Professions Code section 10156.7 and the following conditions,
20 limitations, and restrictions will attach to the restricted license issued by the Bureau of Real
21 Estate.

22 By reason of the foregoing and solely for the purpose of settlement of the
23 Statement of Issues without further administrative proceedings, it is stipulated and agreed that the
24 Commissioner shall adopt the following Order:

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1 ORDER

2 Respondent’s application for a real estate license is denied; provided, however, a
3 restricted real estate salesperson license shall be issued to Respondent pursuant to California
4 Business and Professions Code section 10156.5. The restricted salesperson license issued to
5 Respondent shall be subject to all of the provisions of California Business and Professions Code
6 section 10156.7 and to the following limitations, conditions and restrictions imposed under
7 authority of California Business and Professions Code section 10156.6:

8 1. The license shall not confer any property right in the privileges exercised, and
9 the Real Estate Commissioner may by appropriate order and prior to a hearing, suspend the right
10 to exercise any privileges granted under this restricted license in the event of:

11 (a) The conviction of Respondent (including a plea of nolo contendere) of a crime
12 which is substantially related to Respondent’s fitness or capacity as a real estate licensee; or

13 (b) The receipt of evidence that Respondent has violated provisions of the
14 California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate
15 Commissioner, or the conditions attaching to this restricted license.

16 2. Respondent shall not be eligible to apply for the issuance of any unrestricted
17 real estate license nor for the removal of any of the conditions, limitations or restrictions of a
18 restricted license until three (3) years have elapsed from the effective date of this Decision.
19 Respondent shall not be eligible to apply for any unrestricted licenses until all restrictions
20 attaching to the license have been removed.


21 3. Respondent shall submit with any application for license under an employing
22 broker, or any application for a transfer to a new broker, a statement signed by the prospective
23 employing broker on a form approved by the Bureau which shall certify:

24 (a) That the employing broker has read the Decision which is the basis for the
25 issuance of the restricted license; and

1 (b) That the employing broker will carefully review all transaction documents
2 prepared by the restricted licensee and otherwise exercise close supervision over the licensee's
3 performance of acts for which a license is required.

4 4. Respondent shall notify the Commissioner in writing within 72 hours of any
5 arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office
6 Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of Respondent's
7 arrest, the crime for which Respondent was arrested and the name and address of the arresting
8 law enforcement agency. Respondent's failure to timely file written notice shall constitute an
9 independent violation of the terms of the restricted license and shall be grounds for the
10 suspension or revocation of that license.

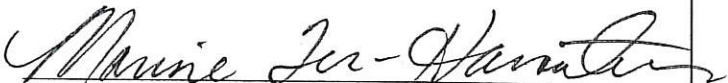
11 DATED: 03/22/2016



Diane Lee, Counsel
Bureau of Real Estate

13 I have read the Stipulation and Waiver and its terms are agreeable and acceptable
14 to me. I understand that I am waiving my rights given to me by the California Administrative
15 Procedure Act (including but not limited to California Government Code sections 11506, 11508,
16 11509, and 11513), and I willingly, intelligently, and voluntarily waive those rights.


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18 DATED: 02/29/2016



Marine Ter-Haroutunian
Respondent

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21 I have reviewed this Stipulation and Waiver and Decision After Rejection as to
22 form and content and have advised my client accordingly.

23
24 DATED: 2/29/16



Enna Berjikian, Esq.
Attorney for Respondent

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26 * * *

1 I have read the Statement of Issues filed herein, the Proposed Decision of the
2 Administrative Law Judge dated January 21, 2016, and the foregoing Stipulation and Waiver
3 signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a
4 restricted salesperson license to Respondent.

5 Therefore, IT IS HEREBY ORDERED that the application for real estate
6 salesperson license of Respondent MARINE TER-HAROUTUNIAN be denied and a restricted
7 real estate salesperson license be issued to Respondent if Respondent has otherwise fulfilled all
8 of the statutory requirements for licensure. The restricted license shall be limited, conditioned,
9 and restricted as specified in the foregoing Stipulation and Waiver.

10 This Order shall become effective at 12 o'clock noon on

11 ~~MAY 16~~ 16 2016

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14 IT IS SO ORDERED 4/24/2016

15 WAYNE S. BELL
16 REAL ESTATE COMMISSIONER

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FILED

FEB 24 2016

BUREAU OF REAL ESTATE

By [Signature]

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	CalBRE No. H-39984 LA
)	
MARINE TER-HAROUTUNIAN,)	OAH No. 2015110044
)	
Respondent.)	

NOTICE

TO: MARINE TER-HAROUTUNIAN, Respondent, and ENNA BERJIKIAN , his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 21, 2016, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 21, 2016, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on December 22, 2015, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of December 22, 2015, at the Los Angeles

1 office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Los Angeles Office of the Bureau of Real
4 Estate unless an extension of the time is granted for good cause shown.

5 DATED: 2/12/2016.

6 REAL ESTATE COMMISSIONER

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10 WAYNE S. BELL

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

In the Matter of the Application of:

MARINE TER-HAROUTUNIAN,

Respondent.

No. H-39984 LA

OAH No. 2015110044

PROPOSED DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 22, 2015, in Los Angeles, California.

Maria Suarez, complainant, was represented at the hearing by Diane Lee, Staff Counsel.

Marine Ter-Haroutunian, respondent, was represented by Freeman M. Butland and Enna Berjikian, attorneys at law.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on December 22, 2015.

FACTUAL FINDINGS

1. Complainant brought the statement of issues in her official capacity as a Supervising Special Investigator of the State of California. Respondent filed a timely Request for Hearing.

2. On June 17, 2015, respondent submitted an application to the Bureau of Real Estate (Bureau) to be licensed as a real estate salesperson. (Exhibit 2.) The Bureau denied her application for licensure and issued a statement of issues.

Conviction

3. On March 9, 1990; respondent was convicted, on a plea of nolo contendere, in the Municipal Court of the State of California, County of Los Angeles, in case no. 90P02294, of violating Penal Code section 484, subdivision (a) (larceny), a misdemeanor. Imposition of sentence was suspended and she was placed on summary probation for 12 months. In addition, she was ordered to pay fines and assessments totaling \$352, instead of two

alternatives the court provided, either that respondent serve five days in county jail or perform 37 hours of community service. (Exhibit 4.)

4. The facts and circumstances underlying the conviction are that on February 9, 1990, respondent stole four items of ladies' apparel valued at \$64.92 from a Mervyn's department store. Respondent had made a purchase at the store earlier in the day. When she returned, she used the Mervyn's bag from the previous purchase to carry items out of the store without paying for them. She told police she stole the items because she had no money. She had a Mervyn's charge card in her possession. (Exhibit 5.)

5. On August 19, 2015, the court expunged the criminal conviction by granting respondent's motion for an order of dismissal under Penal Code section 1203.4. (Exhibit H.)

Nondisclosure

6. Respondent failed to disclose the conviction in her application for a license. She did not remember it. When the Bureau advised that her application was under review because of the undisclosed conviction, respondent still could not remember it. She spoke to her mother, who told her she did indeed have a conviction for shoplifting. Gradually respondent recovered some memory of the incident, but it remains vague to this day.

7. Because of her work experience, described below, respondent appreciated upon submitting her application that the Bureau would perform a background check, including any criminal background.

Rehabilitation

8. Respondent worked for a small law firm in Burbank, California for 10 years. She was promoted a few times from her first position as receptionist. She then worked for 26 years, mostly in Human Resources (HR), for a large Hollywood studio. She was promoted several times and worked for different corporations affiliated with the studio. She worked for several years as the Director of HR.

9. It was common practice for HR to perform background checks on prospective employees, including checking for any criminal convictions. A significant part of respondent's responsibilities was to work with the results of the background checks.

10. When she was laid off in 2015, respondent decided she should pursue a career in real estate as a way of putting her skill in working with people to good use. Respondent wishes to continue to support her family financially. She has been married since 1982 and has two children.

11. Respondent has worked for over a decade as a volunteer to help the disabled. (Exhibit D.) Her volunteer work at the State Council on Developmental Disabilities, Los Angeles Office, was prompted in part by the developmental disability of her son, now 22 years old. His disability is extensive, following several serious illnesses and long

hospitalizations that began when he was 10. (Exhibit G.) He requires physical and occupational therapy for partial paralysis.

12. Respondent submitted several reference letters from people who worked with and supervised her for several years. The letters speak of respondent's hard work and responsible conduct, as well as her talent in balancing the interests of business and the personal needs of employees. (Exhibits B, C, D, and E.)

13. In looking for a new job in 2015, respondent circulated a resume that falsely stated she was a real estate licensee. She gave no explanation for doing so. (Exhibit A.)

LEGAL CONCLUSIONS

1. Respondent has the burden of proof. She must show by a preponderance of the evidence that issuing her a license would be consistent with the Bureau's mandate to protect the public and ensure that licensees are law-abiding. *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.

Pertinent Law and Regulations

2. Business and Professions Code section 475 provides in pertinent part:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly . . . omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

3. Business and Professions Code section 480 provides in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. . . .

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself . . . , or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. [¶] . . . [¶]

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

4. Business and Professions Code section 10177, provides in pertinent part:

The commissioner may . . . deny the issuance of a license to an applicant, who has done any of the following . . . :

(a) Procured, or attempted to procure, a real estate license . . . for himself or herself . . . by making a material misstatement of fact in an application for a real estate license

(b) . . . been found guilty of, or been convicted of . . . a crime substantially related to the qualifications, functions, or duties of a real estate licensee. . . .

5. Criteria for evaluating whether conduct bears a substantial relationship to the qualifications, functions, or duties of a licensee are set out in California Code of Regulations, title 10, section 2910, providing in pertinent part:

(a) When considering whether a license should be denied . . . on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) . . . 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 Section[] 480 . . . of the Code if it involves: [¶] . . . [¶]

(4) The employment of . . . 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 . . . of another. [¶] . . . [¶]

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were

committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

Cause Based on Criminal Conviction

6. Cause exists to deny respondent's March 9, 1990 application for a real estate salesperson's license based on her criminal conviction. Respondent's shoplifting is a crime substantially related to the qualifications, functions, and duties of the real estate profession. The crime involved dishonesty, fraud, and deceit with the intent to substantially benefit respondent. Thus under section 475, subdivisions (a)(2), (a)(3), and (a)(4), section 480, subdivision (a), and 10177 subdivision (b), of the Business and Professions Code, the crime puts in doubt whether respondent would be honest in professional dealings.

7. Such doubt has several aspects. Transactions in real property require the real estate salesperson's honesty in every step of a process that often takes weeks, even months. Throughout the process, salespersons must be honest in their communications. But in addition, a salesperson must diligently check on disclosures regarding multiple details of a property's condition and history required by law of property sellers. Respondent's shoplifting conviction raises the question whether respondent can be honest in performing these duties.

8. On the other hand, the conviction is quite old, occurring decades ago. It was an isolated incident. The punishment was minor and the probation period was short.

Nondisclosure

9. Cause exists to deny respondent's application under Business and Professions Code sections 480, subdivision (d), and 10177, subdivision (a), based on respondent's failure to disclose her criminal conviction. It is understandable that she forgot the conviction, as she credibly testified, because it happened long ago and the punishment was relatively light. Nevertheless, her failure to disclose it constituted a misstatement of fact.

10. The nondisclosure has some weight against respondent because of an aggravating factor. That is, as indicated in Finding 11, she misrepresented her status as a real estate licensee on a resume, Exhibit A. Respondent made the misrepresentation on her resume recently, despite her experience in HR. Because of her work experience, she was aware how to check her own criminal background. She should have appreciated the dishonesty of a misrepresentation in a resume, as well as the lack of care in checking that her application was completely accurate.

Rehabilitation

11. The Bureau's criteria for evaluating rehabilitation are set out in California Code of Regulations, title 10, section 2911, providing in pertinent part:

The following criteria have been developed by the Bureau pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance . . . of a license in considering whether or not to deny the issuance . . . on account of a crime or act committed by the applicant:

- (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the Bureau action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the Bureau.) [¶] . . . [¶]
- (c) Expungement of criminal convictions resulting from immoral or antisocial acts. [¶] . . . [¶]
- (e) Successful completion or early discharge from probation or parole. [¶] . . . [¶]
- (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought. [¶] . . . [¶]
- (l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.
- (n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:
 - (1) Testimony of applicant.
 - (2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns. [¶] . . . [¶]
 - (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

12. Far more than two years have passed since respondent's shoplifting conviction. With respect to her criminal conviction, respondent has more than met the criterion of rehabilitation set out in California Code of Regulations, title 10, section 2911, subdivision (a).

13. More troubling than the criminal conviction is the recent nondisclosure in respondent's application. However, respondent was credible in testifying that she forgot the conviction and believed she was providing the Bureau all requested information. The aggravating factor that there was a misrepresentation in her resume does not overcome respondent's other evidence of decades of honest work and good community involvement.

14. Respondent has no felony or misdemeanor convictions during the more than two decades since her criminal conviction. During this time, there has been no conduct on respondent's part that might lead to such convictions. Respondent thus meets the criterion for rehabilitation under the California Code Regulations, title 10, section 2911, subdivision (n)(5).

15. As indicated in Finding 5, respondent's conviction was expunged, so that she meets the rehabilitation criterion of California Code Regulations, title 10, section 2911, subdivision (c).

16. The stability of her family life was in evidence, particularly her fulfillment of difficult parental responsibilities to a son with longstanding and serious health problems. Respondent's years of employment in very responsible positions with large companies indicates that she is generally a trustworthy and hardworking person. Based on this and related evidence, respondent credibly presented a change in attitude from that which existed at the time of the conduct that led to her conviction. She thus has met the criteria of rehabilitation under California Code of Regulations, title 10, section 2911, subdivisions (h), (m), and (n).

17. Respondent met her burden of proof by a preponderance of the evidence with respect to rehabilitation. Respondent's efforts at rehabilitation are sufficient for the issuance of a restricted real estate salesperson's license.

ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license shall be subject to all of the 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 the Business and Professions 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 this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations, or restrictions attaching to the restricted license until three 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 form RE 552 (Rev. 4/88) approved by the Bureau 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.

Dated: January 21, 2016

DocuSigned by:

Thomas Lucero

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THOMAS Y. LUCERO
Administrative Law Judge
Office of Administrative Hearings