

FILED

OCT 07 2016

BUREAU OF REAL ESTATE

By *John Aguirre*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of)	CalBRE No. H-40198 LA
)	
JULIE LYNN EVERLY,)	OAH No. 2016041057
)	
)	
<u>Respondent.</u>)	

DECISION

The Proposed Decision dated August 10, 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.

The application for a real estate salesperson license is denied, but the right to a restricted real estate 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.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on OCT 28 2016

IT IS SO ORDERED 9/22/16

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL SANDRI
Assistant Commissioner

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

In the Matter of the Statement of Issues
Against:

JULIE LYNN EVERLY,

Respondent.

Case No. H-40198 LA

OAH No. 2016041057

PROPOSED DECISION

Administrative Law Judge Gloria A. Barrios heard this matter on July 12, 2016, in Los Angeles, California.

Lisette Garcia, Staff Counsel for the Bureau of Real Estate (Bureau), represented Maria Suarez (Complainant), Deputy Real Estate Commissioner.

Julie Lynn Everly (Respondent) was present and represented herself.

The matter was submitted for decision on July 12, 2016.

FACTUAL FINDINGS

1. Complainant brought the Statement of Issues in her official capacity.
2. On September 9, 2014, Respondent submitted an application for a real estate salesperson's license. Respondent was previously licensed as a real estate salesperson (license number 01067128) from March 8, 1990, to September 9, 1991. Her prior salesperson's license was conditionally suspended on September 9, 1991, for failure to comply with educational requirements. Respondent's license expired March 7, 1994. No current license was issued to Respondent due to the conviction described below.
3. On May 10, 2001, Respondent was convicted, after her plea of nolo contendere, of violating Penal Code section 529.3 (false impersonation of another through electronic communication with an intent to injure or defraud), a misdemeanor. (*People v. Julie Lynn Everly*, Superior Court of the State of California, County of Los Angeles, case no.

.1PN01972.) Imposition of sentence was suspended and Respondent was placed on three years summary probation with certain terms and conditions including that she pay fines, fees and restitution totaling \$578.57. Respondent was also ordered to serve three days in jail less credit served for three days and to serve 450 hours of Caltrans service. In lieu of 450 hours of Caltrans service, Respondent served 45 days in jail. On May 10, 2004, Respondent successfully completed probation.

4. The facts and circumstances underlying the conviction are that between December 12, 1991, and April 11, 2001, Respondent falsely used another person's name to rent an apartment in Canoga Park. On December 23, 1999, Respondent explained that she moved into the apartment with her boyfriend at the time who was already living there. Respondent initially did not know that the apartment was in her boyfriend's ex-girlfriend's name. He moved out six months later. Respondent fell behind in the rent and was evicted on April 11, 2001. The ex-girlfriend pressed criminal charges when she learned that Respondent continued to use her name in the rental of her former apartment and was now in arrears. Respondent argued that since she was the only one living in the apartment, she was the only one found criminally liable.

5. Respondent admitted her wrongdoing to the extent she knew she was using someone else's name. Respondent paid all restitution owed. On March 30, 2001, she signed an agreement with the apartment manager to take responsibility for the debt owed so that the eviction would not go on the ex-girlfriend's credit report. Respondent cooperated with the police. (See Police Report; Exh. 5.)

6a. On September 9, 2014, Respondent filed an application for a real estate salesperson's license with the Bureau. Background Information Question No. 1 on the application reads: "Have you ever been convicted of any violation of law? All state and federal misdemeanor and felony convictions, and all military and foreign convictions, must be disclosed." (Exh. 3.)

b. "Convicted" as used in question 1 includes a verdict of guilty by judge or jury, a plea of guilty, a plea of nolo contendere (i.e., "no contest"), or a forfeiture of bail in the courts (including military courts) of any state, commonwealth, possession or country. All convictions must be disclosed, no matter how long ago they occurred, even if the plea or verdict was set aside, the conviction dismissed or expunged, or you have been pardoned. Convictions occurring while you were a minor (under 18 years of age) must be disclosed unless the record of the conviction has been sealed under section 1203.45 of the California Penal Code or section 781 of the California Welfare and Institutions Code.

c. Respondent, under penalty of perjury, answered "No." Respondent failed to disclose the May 10, 2001 misdemeanor conviction (Exh. 3.) She explained wanted to forget this episode in her life and had simply blotted it out of her mind. She contended she wasn't trying to deceive the Bureau.

7. Respondent is currently employed at Casa Violin (Casa), an apartment building in Encino. Respondent offered character reference letters. These letters were received in evidence as administrative hearsay.¹ Corrine Mesner (Mesner) is the owner of Casa. Mesner wrote a letter in support of Respondent. Mesner wrote, "I am writing this letter in support of Julie Everly. Julie has worked for me for the past 4 years. I own an apartment building where Julie is my on-site resident property manager. The property has 22 units. Julie's responsibilities are numerous and she exceeds my expectations in her work ethic, performance and input. She handles each task with diligence, grace and immediacy. She makes sure our residents are a priority. Trustworthiness is a top expectation for me in my business and I have full confidence in Julie. She handles more than \$20,000 per month in rents, in addition to rental applications containing sensitive information. Julie is a true professional and I hope she will stay with me forever!" (Exh. A.) Mesner knew about Respondent's conviction.

8. Respondent is also employed at Prellis Property Management (Prellis) as a property manager. She has worked at Prellis in Granada Hills since March 2013. Respondent manages 120 single-family dwellings at Prellis. Ron Prechtl (Prechtl) is a licensed real estate broker and owner of Prellis. He wrote a letter on Respondent's behalf. Prechtl wrote, "In Julie's time as my subordinate, I have grown to trust her with more and more responsibility, because Julie has proven to be reliable and efficient with all types of work. She does not complain about having to be at work, and is in fact always actively seeking new projects or assignments. Julie is well-liked at Prellis Property Management, and other employees know they can go to Julie with problems and concerns since Julie is willing to listen and can often come up with solutions. She is also of good moral character, and is kind and generous to those around her." (Exh. C.) Prechtl knew about Respondent's conviction.

9. Respondent also offered e-mails from tenants. For example, Joan Petrone (Petrone), a tenant, wrote Respondent on March 1, 2016. Petrone wrote: "The above repairs have been executed from a feeling of gratitude for the excellent attitudes, understanding and support that you and your company, Prellis Management has shown us." (Exh. E.)

10. Respondent's former employer, Komyar Tom Rohani (Rohani), a licensed real estate broker and salesperson, wrote a letter on her behalf. Rohani wrote, "I would like to speak on the character of Julie Everly. She was employed at my company, First Funders Mortgage from 2001 to 2008 (until and shortly after the big market crash). She was my office manager and my Sr. Loan Processor, Jr. Underwriter. She demonstrated excellent

¹ The term "administrative hearsay" is a shorthand reference to the provisions of Government Code, section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Ca.App.4th 1001.)

work ethics and I never doubted her ability, work ethics or trust. During her employment, she came to me in complete confidence and honest[ly] explaining to me in full detail her legal matter (misdemeanor) that she was fighting. She explained that the courts have offered her Cal-Trans [service] that consisted of many, many hours that she could not complete due to other personal matters that were going on her life simultaneously. ie; losing her apartment, car, previous job and most heartbreaking, her mother became suddenly ill and passed away. She explained that she had no choice than to trade her Cal Trans hours in for a few weeks in the county jail. During her time away from the office, I kept her position for her return with full pay as I believe that everyone goes through something sometime in their life and deserve for someone to be there for them and on their side. Julie and I will stay in touch with one [another] and I consider her a very close, honest and trusting friend of the family for life and have never had any trust issues whatsoever with her. I am currently in the process of growing my real estate/ mortgage business once again and would love to have her come back to work for me once my business is ready for take-off.” (Exh. B.) Rohani knew about Respondent’s conviction.

11. Respondent seeks a salesperson license so that she can move up in a career in property management.

12. Respondent attended Los Angeles Valley College and Los Angeles Pierce College. She has fulfilled her general education requirements.

13. Respondent is active and attends church at Higher Vision Church in Valencia. She volunteers in church activities involving children.

14. Respondent’s testimony was sincere and consistent. There is no evidence that she has suffered any other conviction. Respondent is 48 years old. She is not married. Respondent has one adult child.

LEGAL CONCLUSIONS

1. Respondent has the burden of proof in this matter because she applied for and was denied licensure by the Bureau, then appealed the denial. The hearing on Respondent’s appeal was held pursuant to a Statement of Issues filed by the Bureau. The Statement of Issues was created pursuant to the authority conferred by Government Code section 11504. A Statement of Issues is the appropriate initial pleading in matters where a respondent requests that an agency take some action regarding whether a right, authority, license or privilege should be granted, issued or renewed and the agency has refused to do so. Section 11504 places the burden of proof upon the Respondent to establish why the agency should grant the applied for right, authority, license or privilege.

This conclusion is supported by the decision in *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, where the Court of Appeal, in considering the issue of who has the burden of proof in an administering hearing, stated:

As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by preponderance of the evidence. . . .

The standard of proof is a preponderance of the evidence.

2. Under Business and Professions Code,² sections 475, subdivision (a)(2), and 480, subdivision (a)(1), the Bureau may deny a real estate license applicant on the ground that she has been convicted of a crime.

3. Under section 475, subdivision (a)(3), the Bureau may deny a real estate applicant on the ground that she committed any crime involving dishonesty, fraud or deceit with the intent to substantially benefit herself or another, or to substantially injure another.

4. Under section 10177 subdivision (b), the Bureau may deny a real estate license applicant on the ground that she has been convicted of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee.

5. The Bureau has issued regulations that specify the types of crimes that are “substantially related” to the qualifications, functions, or duties of an applicant for a Bureau license. Respondent’s conviction for false impersonation of another through electronic communication with an intent to injure or defraud is “substantially related” under California Code of Regulations, title 10 (CCR), section 2910, subdivision (a)(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.” Respondent’s conviction for use of another person’s name in the rental of an apartment is substantially related to the qualifications, functions, or duties of an applicant for a real estate salesperson’s license.

6. Respondent argued that there were extenuating circumstances regarding the crime for which she was convicted. Respondent cannot impeach her criminal conviction. The entry of her nolo contendere plea in her 2001 criminal conviction is conclusive evidence of her guilt. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) The Bureau cannot disturb Respondent’s criminal conviction. However, the Bureau may examine the underlying circumstances of the conviction in order to fix the degree of discipline pursuant to section 493. In this case, Respondent moved into an apartment without knowing that it was not rented in her boyfriend’s name. Once he moved out of the apartment, she should have

²All further statutory references are to the Business and Professions Code except when noted.

changed the lease into her name. In this matter, there does seem to be extenuating circumstances that lessen the degree of her misconduct for disciplinary purposes.

7. Cause exists to deny Respondent's application for a real estate salesperson's license pursuant to Code sections 475, subdivisions (a)(2), (a)(3), 480, subdivision (a)(1), and 10177, subdivision (b), because Respondent has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Factual Findings 3 through 5, and Legal Conclusions 2 through 5.)

8. Under section 475, subdivision (a)(1), the Bureau may deny a license on the ground that the applicant knowingly omitted to state a material fact in a license application."

9. Under section 480, subdivision (a)(2), the Bureau may deny a license on the ground that the applicant had done any act involving dishonesty, fraud or deceit with the intent to substantially benefit herself or another, or to substantially injure another.

10. Under section 10177, subdivision (a), the Bureau may deny a license on the ground that the applicant attempted to procure a real estate license by making a material misstatement of fact in a license application.

11. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Code sections 475, subdivision (a)(1) and 10177, subdivision (a), because Respondent failed to disclose her 2001 criminal conviction in her license application, which constitutes an omission of a material fact, and a material misstatement of fact. (Factual Findings 3 through 6, and Legal Conclusions 8 and 10.)

12. Cause does not exist to deny Respondent's application for a real estate salesperson license pursuant to Code section 480, subdivision (a)(2), in that Respondent did not commit a dishonest, fraudulent or deceitful act when she failed to disclose her conviction in her license application. (Factual Findings 3 through 6, and Legal Conclusion 9.)

Rehabilitation and Mitigation

13. Although cause for license denial exists, it is necessary to determine whether Respondent has been sufficiently rehabilitated to warrant issuance of a license. Criteria have been developed by the Bureau to evaluate the rehabilitation of an applicant who has committed a crime. These criteria, found at CCR section 2911, are summarized as follows:

- Subdivision (a), passage of at least 2 years since the conviction or the underlying acts, or longer if there is a history of substantially related acts;
- Subdivision (b), restitution;
- Subdivision (c), expungement of the conviction;
- Subdivision (d), expungement of the requirement to register as an offender;
- Subdivision (e), completion of, or early discharge from, the criminal probation;

Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
Subdivision (g), payment of any criminal fines or penalties;
Subdivision (h), stability of family life;
Subdivision (i), enrollment in or completion of educational or training courses;
Subdivision (j), discharge of debts to others, or earnest efforts to do so;
Subdivision (k), correction of business practices causing injury;
Subdivision (l), significant involvement in community, church or private programs for social betterment;
Subdivision (m), new and different social and business relationships; and
Subdivision (n), 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, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

14. Rehabilitation is a state of mind and the law looks with favor upon one who has achieved reformation and regeneration with the reward of the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Respondent bears the particular burden of establishing rehabilitation sufficient to compel her licensure. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.)

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14. Respondent has provided some evidence of rehabilitation. She offered impressive letters of reference that attested to her good character. Respondent has held positions of trust in her employment without complaint. She has not been convicted of any other crime since 2001. The Real Estate Law and the disciplinary procedures are designed to protect the public. Clients rely upon real estate licensees' integrity to represent their interests. (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205; *Golde v. Fox* (1976) 98 Cal.App.3d 167, 177; *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) Although there are extenuating circumstances, Respondent acknowledged the wrongfulness of her actions, which is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.) Although Respondent's failure to disclose her conviction to the Bureau was troubling, given the fact that her conviction was 15 years ago and her credible testimony, the public will be protected if she were allowed to obtain licensure at this time on a restricted basis.

ORDER

Respondent Julie Lynn Everly'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 Business and Professions Code section 10156.5, if Respondent makes application therefore and pays to the Bureau the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all 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 that 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 the restricted license.

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

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, 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 shall be grounds for the suspension or revocation of that license.

DATED: August 10, 2016

DocuSigned by:
gloria a. barrios
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GLORIA A. BARRIOS
Administrative Law Judge
Office of Administrative Hearings