FILED

JUN 15 2018

BUREAU OF REAL ESTATE

By John Caprill

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of GWENDOLYN J. JOHNSON, Respondent.	CalBRE No. H-40910 LA OAH No. 2018020115

DECISION

The Proposed Decision dated May 4, 2018, 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 party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. 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.

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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 JUL 06 2018.

IT IS SO ORDERED June 8, 2018

WAYNE S. BELL
REAL ESTATE COMMISSIONER

By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: GWENDOLYN J. JOHNSON, Respondent.	Case No. H-40910 LA OAH No. 2018020115

PROPOSED DECISION

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings, heard this matter on April 18, 2018, in Los Angeles, California. Bureau of Real Estate (Bureau) Counsel James R. Peel represented Maria Suarez (complainant), a Bureau Supervising Special Investigator. Gwendolyn J. Johnson, also known as Gwendolyn Hamilton, (respondent) represented herself and was present throughout the hearing.

Oral and documentary evidence was received, the record closed, and the matter submitted on the hearing date.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Statement of Issues in her official capacity.

2. On January 29, 2016, respondent applied to the Bureau for a real estate salesperson license. Citing respondent's criminal convictions and failure to disclose the convictions on her application, complainant declined to issue respondent a license. Respondent timely filed a Notice of Defense requesting a hearing and this matter ensued.

Respondent's Criminal Convictions

3. On January 23, 1993, in the Municipal Court of California, County of Los Angeles, case numbers 92M00462 and 91M04447, respondent was convicted on her nolo contendere pleas of violating Penal Code sections 459 (commercial burglary) and 484, subdivision (a) (petty theft), both misdemeanors. The court suspended imposition of sentence and placed respondent on summary probation for three years. The probation terms and conditions included serving 15 days in county jail less 15 days credit and completing a 60-day "P.A.W.W.S." program,[1] subsequently modified to a term of community service. Respondent successfully completed the probationary requirements.

4. The facts and circumstances underlying the January 1993 conviction are that respondent accompanied her sister-in-law to a department store where the two were arrested for shoplifting. Respondent denies intending to leave the store with merchandise for which she had not paid but accepts that she was legally culpable in her sister-in-law's scheme.

5. On December 2, 1993, in the Municipal Court of California, County of Los Angeles, Case Number VAO18765, respondent was convicted of two counts of violating Penal Code section 666 (petty theft with prior).[2] Court records reflecting the court's sentence were not provided in the instant matter. A court report dated March 3, 1994 states that, in connection with her December 1993 conviction, the court pronounced and suspended sentence and placed respondent on formal probation for 36 months, with terms and conditions including serving time in jail and paying a fine. The record is indeterminate regarding the amount of time to be served or the amount of fine imposed.

6. Respondent has no recollection of the facts and circumstances giving rise to the December 1993 conviction, including the terms of her probation and whether she satisfied them. The record is otherwise indeterminate regarding these matters.

7. On May 10, 1995, in the Municipal Court of California, County of Los Angeles, case number SA014011, on her plea of nolo contendere, respondent was convicted of violating Penal Code section 476A, subdivision (A) (insufficient funds check). The court sentenced respondent to be placed on formal probation for an undefined period of time and to pay restitution in the amount of $1763.66. Respondent, unable to pay the restitution amount, was imprisoned.

8. The facts and circumstances giving rise to the May 1995 conviction occurred over several months in 1992 when respondent wrote checks for purchases at several retail stores when she had insufficient funds to cover the checks.

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[1] The record is indeterminate regarding what the acronym P.A.W.W.S means or what the program requires.

[2] The record is indeterminate regarding whether respondent's conviction was based on a plea or verdict after trial.

Related License Disciplinary Actions

9. On June 14, 1994, respondent filed an application for a real estate salesperson license with the Bureau, then known as the Department of Real Estate (Department). Respondent appealed the Department's initial determination denying her license. On May 15, 1995, after a disciplinary hearing, the Department issued a Decision, effective June 6, 1995, adopting a decision of an administrative law judge. In its Decision, the Department denied respondent's application, citing her previous convictions, the relatively short time since the most recent conviction at the time, and the fact that respondent was still serving the probation term for the most recent crime. In its adopted decision, the Department encouraged respondent to reapply for a license "upon the successful termination" of her probation. (Exh. 8, p. 5.)

Respondent's Current License Application

10. The Bureau's Salesperson License Application, question 23, asks whether the applicant has incurred any criminal convictions and, if so, to provide details about the conviction, including the court of conviction, arresting agency, date of conviction, code section violated, and case number. Respondent checked the box marked "Yes" to question 23 but provided information about just one conviction, the petty theft conviction in Torrance, with limited details and an erroneous date, noting the conviction occurred in April 1993.

11. Respondent explained that, while she was aware that she had multiple criminal convictions, her memory of their details was and remains extremely murky. She believed if she indicated there was at least one conviction, the Bureau would be prompted to obtain respondent's records from the appropriate authorities and thereby find her entire criminal history. Respondent expressed remorse that she had not been more proactive in researching the information herself, noting that she could have obtained her own records from the court clerk offices in the course of preparing the license application.

Mitigation and Rehabilitation

12. Respondent, married by age 19 and becoming the mother of four sons in short order, spent the first decades of her adulthood providing for and raising her children. She was rarely freed from the constraints of work and household responsibilities. From 1982 until 1986, respondent worked as a licensed real estate salesperson, work she enjoyed and felt she excelled at; however, her involvement in a series of crimes beginning in February 1986[3] and ending with her May 1995 conviction, involving passing bad checks and participating in petty larcenies, changed the course of respondent's life. Respondent explains that this period coincided with her children becoming old enough to increasingly care for themselves. Freed from the constraints of work and parenting responsibilities for young children, respondent

[3] Respondent's criminal history prior to 1993 is not alleged as grounds for denying her license in complainant's statement of issues and is considered in the instant matter only to the extent it is relevant to establishing mitigation or rehabilitation.

increasingly spent time with friends involved in petty criminal behavior. The time away from life responsibilities and adherence to social norms, and devoted to engaging in criminal activity, was liberating for respondent at the time.

13. But respondent's period of criminal activity ended 23 years ago and has never been repeated. Since her last conviction, respondent no longer associates with the group of friends with which she engaged in criminal conduct. Instead, she has focused on building a career, involving herself with charity organizations, and, with her husband of more than 40 years, caring for three minor grandchildren currently living with them.

A. In the 1990's, respondent applied to work in the then-burgeoning field of mobile phones. In a letter dated April 14, 2018, respondent's manager from her first position in the field, Francis Taylor, noted that respondent quickly became the most successful salesperson in the office. Although the company dissolved soon after respondent began working there, Ms. Taylor remained a lifelong friend and supporter, as well as respondent's landlord. In her letter, Ms. Taylor wrote: "Without any hesitation or reservations whatsoever, I can attest to the fact that [respondent] is an honest, hard-working woman with integrity. She would be an asset to the real estate industry in California and therefore I recommend her highly." (Exh. B.)

B. From 1999 until 2016, respondent worked as an account executive for the Wireless Group, a company representing a number of wireless services companies. Respondent handled the cellular needs for large institutional clients, including the Los Angeles office of the United States Department of Veteran Affairs, providing its personnel with hundreds of mobile phone units and maintaining the contracts associated with the phones. Respondent's manager from that position, Alan Brewer, president of the Wireless Group, also wrote a letter of reference on her behalf. In his letter, Mr. Brewer stated that respondent had been a top salesperson in the company, as well as a trainer and manager. "I would highly recommend [respondent] as she is a very conscientious, dedicated and hard worker, always up for the challenge and has great customer service skills. Even though she is no longer employed by me, she will always be called a friend." (Exh. A.)

C. After leaving the Wireless Group, respondent became a licensed car salesperson and currently sells cars at CarMax. She would like to leave car sales and resume her real estate career because, with the new parenting responsibilities she and her husband have assumed, respondent would like to work from her home and believes, as a real estate salesperson, she can do so.

D. In addition to her work and family responsibilities, respondent testified that she is active in a number of charitable organizations including the Union Rescue Mission, an organization that helps the homeless. Respondent testified that she has both volunteered her time and given monetary donations to the organization. A thank-you note dated April 13, 2018 from Union Rescue Mission (Exh. C) corroborates respondent's statements regarding her work for this organization.

14. Respondent's testimony regarding the reasons behind her period of criminal activity, and regarding her rehabilitation and dedication to family and community is credible. It is corroborated by her overall record of a strong work ethic and legitimate employment for the past two decades, and by character reference evidence. Her testimony was simple, straightforward and, in part, against her interest. Respondent does not excuse herself for her misconduct and, while acknowledging her memory lapse, she accepts responsibility for her failure to disclose most of her convictions on her license application. In light of the extensive period of time that has passed since their occurrence, the memory lapse is understandable, if not excusable.

LEGAL CONCLUSIONS

1. The Bureau is the agency of the State of California responsible for issuing and regulating licenses for transacting real estate. (Bus.& Prof. Code,[4] §10071.) . Protection of the public is the Bureau's highest priority in exercising its licensing functions. (§ 10050.1.)

2. The burden of proof is on the applicant to establish she is entitled to the license she seeks. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1224). The person against whom a statement of issues is filed bears the burden of proof at the hearing regarding the issues raised. (*Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471, 476.) The standard of proof is preponderance of the evidence (Evid. Code, § 115.)

3. The Bureau may refuse to issue a license if the applicant has knowingly made a misstatement of, or omitted, a material fact on a license application, been convicted of a crime substantially related to the qualifications, functions or duties of a real estate licensee, or committed an act involving fraud or dishonest dealing. (§§ 475, subd. (a)(1), (2), & (3), 480, subds. (a)(1) & (2), & (d) and 10177, subds. (a) & (b).) Crimes substantially related to the qualifications, functions, or duties of a real estate licensee include those undertaken with the intent of conferring a financial or economic benefit upon the perpetrator. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

4. Respondent's undisclosed crimes of burglary, petty theft, petty theft with priors, and insufficient checks are all variations of theft, an inherently dishonest act. They also involve conference of a financial or economic benefit upon the perpetrator and are therefore substantially related to the qualifications, functions, or duties of a real estate licensee. (Factual Findings 3-8 and Legal Conclusion 3.)

5. Cause exists to deny respondent's real estate license application on the grounds that she knowingly omitted material facts regarding her full criminal record. (Factual Finding 10 and Legal Conclusion 3.)

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[4] All further statutory references are to the Business and Professions Code unless otherwise designated.

6. Cause exists to deny respondent's application for licensure for engaging in the dishonest acts underlying her convictions and the dishonest act of omitting the convictions on her license application. (Factual Findings 3-8 & 10 and Legal Conclusion 3.)

7. The Bureau applies certain criteria for determining whether an applicant is sufficiently rehabilitated for purposes of issuances of a license, including whether at least two years have passed since the most recent conviction, restitution to any person who has suffered monetary losses through the applicant's criminal acts, payment of fines and penalties imposed in connection with the criminal convictions, stability of family life, involvement in community programs designed to provide social benefit or to ameliorate social problems, new and different social and business relationships from those which existed at the time of the criminal conduct, and change in attitude from that which existed at the time of the conduct, including absence of subsequent felonies. (Cal. Code Regs., tit. 10, § 2911.)

8. Acknowledging wrongdoing and accepting responsibility is an essential element of rehabilitation. (*Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal. 3d 933, 940.)

9. Applying the rehabilitation criteria, it has been 23 years since respondent's most recent criminal conviction and she has completed her probation. (Factual Findings 3-8.) The evidence does not establish that respondent paid restitution or that her convictions were expunged. It does establish that she has a stable family life and has met her obligations to provide for them for many years. It also establishes that she is an active and productive member of her community, giving time and money to charitable organizations involved with addressing social problems, evincing a change in attitude and lifestyle commensurate with rehabilitation. (Factual Findings 12-14.) Respondent's failure to disclose her convictions (Factual Finding 10) is a serious setback to the decades of a productive, law-abiding life. Nonetheless, considered in light of respondent's willingness to accept responsibility for her action, it should not completely overshadow her accomplishments. Balancing the relevant factors, granting respondent a restricted license with appropriate conditions is consistent with the Bureau's responsibility to protect the public while allowing her the opportunity to practice her chosen vocation. (Legal Conclusions 1, 7, & 8.)

ORDER

The application of respondent Gwendolyn J. Johnson, also known as Gwendolyn Hamilton, 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 issued to the respondent 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 said 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 any 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 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 form 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.

DATED: May 4, 2018

DocuSigned by:
Deena R. Ghaly
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DEENA R. GHALY
Administrative Law Judge
Office of Administrative Hearings