

FILED

FEB 25 2019

DEPT. OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-41149 LA
)	
FREDERIK'A E. LAMBERT,)	OAH No. 2018100529
)	
Respondent.)	

DECISION

The Proposed Decision dated January 29, 2019, 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 Decision suspends or revokes one or more real estate licenses, but the right to a restricted broker license is granted to Respondent.

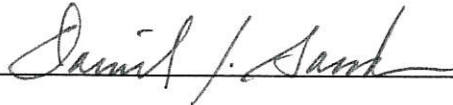
Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for 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 Department'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 March 19, 2019.

IT IS SO ORDERED February 20, 2019

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

FREDERIK'A E. LAMBERT,

Respondent.

Case No. H-41149 LA

OAH No. 2018100529

PROPOSED DECISION

This matter was heard on December 27, 2018, by Erlinda G. Shrenger, Administrative Law Judge with the Office of Administrative Hearings (OAH), in Los Angeles.

Diane Lee, Counsel, represented complainant.

Frederik'a E. Lambert was present and represented herself.

Oral and documentary evidence was received, argument was heard, the matter submitted, and the record closed on December 27, 2018.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Administrative Law Judge takes official notice that complainant Maria Suarez made and filed the Accusation, No. H-41149 LA, solely in her official capacity as a Supervising Special Investigator for the Department of Real Estate (Department), State of California.

2. Frederik'a E. Lambert (respondent) is licensed by the Department as a real estate broker. Her real estate broker license, number B/01790470, was originally issued on January 29, 2007. The license was last renewed on January 29, 2015, and has an expiration date of January 28, 2019.

3. The Accusation, No. H-41149 LA, was filed on August 30, 2018. On or about September 18, 2018, respondent submitted a Notice of Defense which contained her request

for a hearing in order to present a defense and matters in mitigation to the allegations in the Accusation.

Felony Complaint and Conviction

4. On October 4, 2017, in the Superior Court, County of San Bernardino, case number FWV17003767, a Felony Complaint was filed against respondent. The Felony Complaint alleged that on October 1, 2017, respondent committed the crime of elder or dependent adult abuse, infliction of injury, in violation of Penal Code section 368, subdivision (b)(1), a felony.

5. On November 13, 2017, in the Superior Court, County of San Bernardino, case number FWV17003767, respondent was convicted on her plea of no contest to one count of violating Penal Code section 368, subdivision (b)(1) (elder or dependent adult abuse, infliction of injury), a felony.

6. At a sentencing hearing on December 13, 2017, respondent was placed on formal probation (supervised) for three years under terms and conditions including, but not limited to, serve 73 days in county jail (less credit for time served of 73 days), complete a 52-week domestic violence batterers program, cooperate with the probation officer, cooperate with the psychiatrist and medical doctor and take all medications as prescribed, keep the probation officer informed of place of residence and cohabitants, meet and keep all appointments with mental health case managers as directed, not attack, strike, or threaten the victim, not have any negative contact with the victim, report to the Department of Behavioral Health for a mental health assessment, participate in rehabilitative programs as directed, pay a Battered Women's Shelter fee according to court-ordered payment schedule (stayed pending successful completion of probation), and pay a restitution fine and a Domestic Violence Fund fee pursuant to court-ordered payment schedule.

7. (A) The facts and circumstances underlying respondent's felony conviction are: On October 1, 2017, at 1922 hours, an officer of the Fontana Police Department was dispatched to the Kaiser Hospital in Fontana in reference to a battery report. Upon arriving at the hospital, the officer spoke to the emergency room nurse who had called the police. The nurse reported that she contacted a woman (later identified as respondent's mother) who was sitting in the emergency room and complained of pain in her right arm and looked distressed. The nurse felt a deformity in the upper portion of the mother's right arm. The mother told the nurse that her injuries were caused by respondent during an altercation they had. Respondent's mother was 67 years old at this time. The nurse put a sleeve on the mother's arm to hold it in place, and then called the police. The nurse was a mandated reporter for elder abuse pursuant to Welfare and Institutions Code section 15630.

(B) At the hospital, the officer obtained a statement from respondent's mother which included the following details. The mother has lived with respondent for approximately 10 years. No one else lives in the home. On October 1, 2017, the mother and respondent began having a verbal argument which escalated to a physical altercation.

Respondent grabbed her mother by her shoulders and began pushing her, punching her in the face, and kicking her. The mother was unable to get away and began to hit back at respondent. The altercation moved to the living room, where respondent pushed the mother towards a wall and they fell, with the mother falling on top of respondent. Respondent kicked her mother as she tried to get up, and she also tried to stick her thumb in her mother's eye that had just recovered from surgery. The mother recalled hearing her arm snap as she fell to the ground. Eventually, the mother broke away from respondent and called a friend, who came to the house and drove the mother to the hospital. The mother stated to the officer that she did not desire any prosecution against respondent for the assault.

(C) During his contact with the mother, the officer saw that she had some swelling under her right eye. Respondent's mother also complained of pain to her back and chest. The officer was informed by one of the emergency room doctors that x-rays taken of the mother's right arm showed that the humerus bone was broken right in the middle. The humerus is "the long bone in the arm that runs from the shoulder to the elbow." (Exh. 4, p. 7.)

(D) On October 2, 2017, at 0156 hours, the officer was advised that respondent's mother was on her way home and wanted the officer to respond to assist her in getting her belongings. The mother allowed the officer into the residence. Respondent was present on the second floor. When the officer asked to speak with respondent outside, respondent complied and walked downstairs with the officer. The officer handcuffed respondent and walked her to his patrol vehicle. He placed her under arrest for elder abuse and transported her to the police station. At the station, respondent invoked her right to remain silent and did not speak with the officer. At the station, the officer saw that respondent had two small abrasions on the left side of her neck that appeared fresh and a bruise behind her left knee as well.

8. At this hearing, respondent testified regarding the incident with her mother. The incident began as a verbal disagreement between the two women but then escalated to a physical altercation, with respondent and her mother pushing, shoving and hitting each other. During the altercation, respondent and her mother fell to the floor, resulting in respondent's mother breaking her arm. Respondent has expressed remorse, apologized, and acknowledged responsibility for her criminal conduct. She appeared sincere in expressing that she loves her mother. She and her mother continue to live in the same house, with respondent as the mother's primary caregiver. Respondent testified she has made amends with her mother. Respondent is especially devoted to her mother since her mother received a cancer diagnosis. Respondent considers the physical altercation with her mother to be a "fluke" in their relationship which does not represent how she feels about her mother.

Failure to Report

9. As a real estate broker licensed by the Department, respondent is required to make a written report to the Department of the filing of an indictment or information charging her with a felony or of her conviction of any felony or misdemeanor. Such written

report is required to be made within 30 days of the date of the filing of the information or the date of the conviction. The failure to timely make a written report constitutes grounds for disciplinary action. (Bus. & Prof. Code, § 10186.2.)

10. Respondent did not make a written report to the Department within 30 days of the October 4, 2017 filing date of the Felony Complaint. She also did not make a written report to the Department within 30 days of the December 13, 2017 date of her felony conviction.

11. As of August 2, 2018, the Department has no record or written notice received from respondent, notifying the Department, pursuant to Business and Professions Code section 10186.2, of any conviction, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor to date. (Exh. 5.)

12. Respondent admitted, and does not dispute, that she failed to report the filing of the Felony Complaint or her felony conviction, within 30 days. She testified that she failed to notify the Department of the Felony Complaint and her conviction because she was "in a crisis" because her mother was diagnosed with cancer around that time. That explanation might provide some mitigation for a short tardiness in meeting the 30-day deadline, but it does not excuse her complete failure to notify the Department of the criminal complaint and her subsequent conviction.

Rehabilitation

13. Respondent is 42 years old. She received her Bachelor's degree in Behavioral Science/Pre-Med from California State Polytechnic University, Pomona in June 1999. She received her Master of Business Administration from University of Wisconsin-Whitewater in May 2001. Respondent has been licensed by the Department as a broker for 12 years. She has no history of prior discipline with the Department.

14. Respondent testified she is currently unemployed. Since May 2018, however, she writes contracts for a construction company on an as-needed, part-time basis. Respondent testified that her income for the last two years has been from a federal government retirement plan and student loans. She receives \$2,000 per month from her federal retirement plan. The last time she engaged in real estate activity was prior to October 2017.

15. Respondent is still on probation for her criminal conviction. She is scheduled to remain on probation until December 12, 2020. Respondent is complying with her probation terms. She checks in with her probation monitor once per month through a hand-scan. Respondent testified that she satisfied her 73-day jail sentence with time served prior to and after her plea deal was signed. Respondent testified she pays the court-ordered fines and fees in monthly payments, but has not yet paid all amounts due. She hopes to have all of the fines and fees paid by June 2019, which is when she also hopes to file a petition for early

termination of her criminal probation. Respondent has no history of any prior or subsequent convictions.

16. Respondent testified regarding her battle with depression. She was first diagnosed with depression between 2004 and 2008, while she was working for the Veteran's Administration. Respondent was diagnosed with chronic depression subsequent to the October 2017 physical altercation with her mother. Respondent testified she has been receiving individual and group therapy, and taking medication, for depression. Through counseling, respondent has learned different coping mechanisms, such as breathing exercises and talking things out and not holding them in. Respondent testified she currently takes medication for depression. Respondent testified that, as part of her criminal probation, she is allowed to use her own therapist for the probation condition requiring her to meet with and keep all appointments with a mental health case manager. (See Exh. 3, p. 5 of 12 [item 6].) In January 2018, respondent began attending individual therapy once or twice per month, with her most recent session occurring in December 2018. Respondent started attending group therapy sometime between February to April 2018, with her most recent session occurring in December 2018. Respondent attends group therapy through Women's Life Group, which addresses anger management, stress mechanisms, and general life issues for women. Respondent's probation officer receives reports about her attendance in group therapy.

17. Since her conviction, respondent had done volunteer work with her church giving out food to the homeless. She volunteered with the Water of Life Church in Fontana from December 2017 through March 2018, and has volunteered with the Abundant Living Church in Rancho Cucamonga since December 2017. With the latter church, she volunteers at least once per month, and sometimes on a weekly basis. Additionally, respondent provides tutoring for a high school student and drives him to football practice; the student's parents and respondent have been friends for many years.

Cost Recovery

18. The Department incurred investigation costs of \$1,150.20 and enforcement costs of \$445, for a total of \$1,595.20. These costs are deemed reasonable, based on the declarations of Maria Suarez and Diane Lee. (Exh. 6.)

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), provides that the Department may suspend or revoke the license of a real estate licensee who has "been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee." Similarly, Business and Professions Code section 490, subdivisions (a) and (b), provide that a board may suspend or revoke a license, or exercise any authority to discipline a licensee, for conviction of a crime

that is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued.

2. Business and Professions Code section 10186.2 provides, in pertinent part:

(a)(1) A licensee shall report any of the following to the department:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor. [¶] . . . [¶]

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, [or] the conviction

(b) Failure to make a report required by this section shall constitute a cause for discipline.

3. (A) Cause exists, pursuant to Business and Professions Code sections 10177, subdivision (b), and 490, to suspend or revoke respondent's real estate broker license, in that respondent was convicted of elder abuse, in violation of Penal Code section 368, subdivision (b)(1), which is a felony and a crime substantially related to the qualifications, functions, and duties of a licensed real estate broker, based on Factual Findings 4-8.

(B) Respondent was convicted of one felony count of elder or dependent adult abuse. Under Penal Code section 368, subdivision (b)(1), the crime of elder or dependent adult abuse occurs when a person "who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering."

(C) Respondent's crime is deemed to be substantially related to the qualifications, functions, or duties of a Department licensee because it involved doing an unlawful act "with the intent or threat of doing substantial injury to the person . . . of another." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

4. (A) Cause exists, pursuant to Business and Professions Code section 10186.2, to suspend or revoke respondent's real estate broker license, in that respondent failed to timely report to the Department, in writing, of the filing of the Felony Complaint against her on October 4, 2017, and her felony conviction on December 13, 2017, based on Factual Findings 4-12.

(B) Here, respondent failed to perform a duty imposed on her by the Real Estate Law. As a Department licensee, she was required to timely make a written report of the filing of the Felony Complaint and her felony conviction in accordance with Business and Professions Code section 10186.2. She failed to do so.

5. Cause exists, pursuant to Business and Professions Code section 10106, to order respondent to pay the Department the sum of \$1,595.20 for the reasonable cost of enforcement and investigation of this case. (Factual Finding 19.) Section 10106, subdivision (a), provides that in any order issued in resolution of a disciplinary proceeding, "the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

6. The objective of license disciplinary proceedings is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in licensees. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d, 1016, 1030-1031.) The purpose of proceedings of this type is not to punish respondent. In particular, the statutes relating to real estate licenses are designed to protect the public from any potential risk of harm. (*Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.)

7. The Department has developed criteria of rehabilitation that are to be considered in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of a license has been initiated. The criteria are set forth at California Code of Regulations, title 10, section 2912, subdivisions (a) through (m). The criteria that are applicable to respondent's case have been considered.

8. Respondent does not meet the criteria for demonstrating rehabilitation from the passage of time since her conviction. The criteria require the passage of at least two years; only one year has passed since respondent's conviction. [§ 2912, subd. (a).] Respondent has been complying with her probation conditions over the past year; however, due to the recency of the conviction, respondent does not meet the criteria for establishing rehabilitation, at this time, from the successful completion of probation [§ 2912, subd. (e)], payment of court ordered fines [§ 2912, subd. (g)], and expungement of conviction [§ 2912, subd. (c)]. Respondent has paid some but not all of the court-ordered fines and fees. She is currently on probation, and is scheduled to remain on probation until December 2020.

9. Despite the foregoing, respondent meets some of the Department's rehabilitation criteria. Respondent has a stable family life with her mother, and is fulfilling her responsibilities as her mother's caregiver. [§ 2912, subd. (j).] Respondent has made amends with her mother. Additionally, respondent actively volunteers with her church in giving food to the homeless, and she also provides tutoring for a high school student. [§ 2912, subd. (l).] Most importantly, respondent's testimony demonstrated a change in attitude from that which existed at the time of her criminal act. [§ 2912, subd. (m)(1).] Respondent

expressed sincere remorse for her crime. She expressed love and devotion for her mother. Respondent and her mother continue to live together. Respondent helps her mother with doctor's appointments related to the mother's cancer diagnosis. Respondent is 42 years old and has otherwise been a law-abiding citizen. She has no history of prior or subsequent convictions. Respondent's conviction appears to have been an isolated incident. Respondent has also been a Department licensee for 12 years with no history of prior discipline with the Department. Under these circumstances, outright revocation of respondent's license would be unduly punitive. However, the public interest requires that administrative sanctions be imposed to protect the public from future misconduct. A restricted license real estate broker license issued under the terms and conditions set forth in the Order below will ensure protection of the public.

ORDER

All licenses and licensing rights of respondent Frederik'a E. Lambert under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.6 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate 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 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 that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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.
3. 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 effective date of this Decision.
4. Respondent shall, within nine months from the effective date of this Decision, 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 Department of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. 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.

6. Respondent shall pay the Department of Real Estate the sum of \$1,595.20 as reimbursement for the reasonable cost of investigation and enforcement of this matter, in accordance with Business and Professions Code section 10106.

DATED: January 29, 2019

DocuSigned by:

Erlinda Shrenger

ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings