

FILED

JAN 10 2020

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPT. OF REAL ESTATE

By 

In the Matter of the Application of:)	DRE No. H-41408 LAe
)	
ALYSSA CLAIRE JOHNSON,)	OAH No. 2019080526
)	
Respondent.)	

DECISION

The Proposed Decision dated November 12, 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 application for a mortgage loan originator endorsement is denied, but the right to a restricted mortgage loan originator endorsement 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.


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 JAN 30 2020.

IT IS SO ORDERED 12/27/19

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER



**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Application of:

ALYSSA CLAIRE JOHNSON, Respondent

Agency Case No. H-41408 LA

OAH No. 2019080526

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on October 24, 2019, in Los Angeles, California. Complainant was represented by Julie L. To, Counsel for the Department of Real Estate (Department). Alyssa Claire Johnson (Respondent) appeared and represented herself.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on October 24, 2019.

FACTUAL FINDINGS

Jurisdiction

1. On March 6, 2018, Respondent signed and subsequently submitted an online individual application (MU4 or application) to the Nationwide Mortgage Licensing System and Registry (NMLS) with a "Transition Requested" for a RES

Mortgage Loan Originator (MLO) endorsement. The Department denied that application, and Respondent requested a hearing.¹

2. On July 11, 2019, Complainant, Chika Sunquist, filed the Statement of Issues while acting in her official capacity as a Supervising Special Investigator of the State of California. Respondent filed a Notice of Defense, and this hearing ensued.

Respondent's License and Disciplinary History

3A. On August 14, 2014, the Department issued Respondent real estate salesperson (RES) license number 01958534.

3B. Respondent's RES license was issued despite her May 14, 2012 misdemeanor conviction for violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of .08 percent or higher).

4A. In a Decision adopting a Stipulation and Agreement, effective January 2, 2018, resolving an Accusation filed August 25, 2017, the Real Estate Commissioner ordered: "All licenses and licensing rights of Respondent . . . under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the [Business and Professions] Code if Respondent makes application therefore and pays . . . the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The

¹ Although the Department's denial letter was not submitted as evidence, the totality of the evidence established that the Department had denied the application, prompting the filing of the Statement of Issues and Notice of Defense.

restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and restrictions imposed under authority of that Code[.]” (Exhibit 3, Stipulation and Agreement, p. 3, lines 14 -20.) The Commissioner’s Decision also ordered that “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 five years have elapsed from the effective date of [the] Decision.” (Exhibit 3, p. 4, lines 3-5.)

4B. The Commissioner’s Decision was based on Respondent’s April 25, 2017 misdemeanor criminal convictions for violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of .08 percent or higher), and Penal Code section 273a, subdivision (b) (child endangerment). Respondent’s convictions arose from her driving with a blood alcohol content of .20 percent or more with her minor son in the vehicle. The Superior Court placed her on four years of probation and ordered to serve 60 days in jail and to complete an 18-month alcohol program, a hospital and morgue program, and a 52-week parenting skills program.

4C. The Commissioner’s Decision was also based on Respondent’s failure to report her conviction to the Department within 30 days, as required by the Real Estate Law.

5. Respondent currently holds a restricted RES license, which is scheduled to expire on January 1, 2022. She is employed by real estate broker Anthony Luis Tavera.

6A. Respondent previously held an appointment and commission as a California notary public, issued on January 3, 2016. On May 24, 2017, an Accusation in

Case No. 2017-0321-AD was filed against Respondent with the California Secretary of State. That Accusation sought revoke Respondent's appointment and commission as a notary public based on her 2017 criminal convictions.

6B. The evidence did not establish when the Accusation was served on Respondent. No proof of service of the Accusation was included with the documents the Department obtained from the Secretary of State. (Exhibit 4.). However, the Accusation was apparently served on Respondent at some point after May 24, 2017, and she apparently timely filed a Notice of Defense, because (1) no default was taken against her, and (2) on July 18, 2018, she sent a letter to the Secretary of State "withdrawing her Notice of Defense and resigning [her] commission." (Exhibit 4, p. 1.) On July 25, 2018, the Secretary of State sent Respondent a letter noting that it was withdrawing the case against her. (Note: The letter erroneously indicated that that the Secretary of State was withdrawing the "Statement of Issues" in Case No. 2017-0321-AD.)

Respondent's Application Responses

7. Respondent signed her March 6, 2018 application under penalty of perjury, attesting that "the information and statements contained herein . . . are current, true, accurate and complete." (Exhibit 8, p. 31.)

8A. In a section of the application regarding "Regulatory Action," Question (K)(5) asked, "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever . . . revoked your registration or license?" (Exhibit 8, pp. 28-29.) Respondent answered "No." (Exhibit 8, p. 29.) Respondent's answer to Question (K)(5) was incorrect because her RES licensing rights

had been revoked but the revocation was stayed, and she was allowed to obtain a restricted license.

8B. In the section of the application regarding "Regulatory Action," Question (K)(9) asked, "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever . . . entered an order concerning you in connection with any license or registration?" (Exhibit 8, p. 29.) Respondent answered "No." This was incorrect in that the Commissioner's Decision contained the orders noted in Factual Finding 4A.

8C. In the section of the application regarding "Regulatory Action," Question (K)(6) asked, "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever . . . denied or suspended your registration or license or application for licensure, disciplined you, or otherwise by order, prevented you from associated with a financial services-related business or restricted your activities?" (Exhibit 8, p. 29.) Respondent answered "Yes" and noted that the Department "restricted [her RES] license due to failing to disclose a DUI conviction in a timely manner after my conviction. [The Department] did not revoke, but has issued me a restricted license for 5 years." (Exhibit 8, p. 30.)

8D. After she submitted her application, Respondent was notified of her incorrect answer to Question (K)(5). In a letter to the Department, dated July 1, 2018, Respondent stated, "I may have misunderstood the question of the revocation of my [RES] license. At the time I filled this information out I was under the impression that I had only a 'Restricted [RES] License,' which is how it stands as of today. . . . I did not realize that there was an actual revocation of my license. . . . I hope it is seen that I was not trying to hide anything. I disclosed 'Yes' to suspended license which . . . is what I thought had happened." (Exhibit 8, p. 32.)

8E. At the administrative hearing, Respondent explained her incorrect answer to Question (K)(5), and her explanation mirrored that provided in her July 1, 2018 letter. Respondent stated that she did not think her RES license was revoked. It was her understanding that her RES license was restricted and is still active. After reviewing the language of the Commissioner's Decision indicating that "all licenses and licensing rights of Respondent . . . under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued" (see Factual Finding 4A), Respondent stated that the language was confusing to her.

8F. Respondent's answers to Questions (K)(5) and (K)(6), constituted misstatements of material facts on her application. However, the evidence established that, at the time Respondent filled out her application, she did not understand that her RES license had been ordered to be revoked and that the revocation was stayed to allow her to obtain a restricted RES license. Given her misunderstanding, Respondent's answers to Questions (K)(5) and (K)(6), were not made with the intention to deceive the Department.

9A. In the section of the application regarding "Regulatory Action," Question (N) asked, "Is there a pending regulatory action proceeding against you for any alleged violation described in (K) through (L)?" (Exhibit 8, p. 29.) Respondent answered "No." This was incorrect in that a case regarding Respondent's notary commission was pending before the Secretary of State as set forth in Factual Findings 6A and 6B.

9B. After she submitted her application, Respondent was notified of her incorrect answer to Question (N). In a letter to the Department, dated July 1, 2018, Respondent stated, "I was unaware there was a pending revocation action as I had not been notified by the state. It wasn't until last week that I got a call from an attorney from the California Secretary of State." (Exhibit 8, p. 16.)

9C. At the administrative hearing, Respondent explained her incorrect answer to Question (N), and her explanation expounded on that provided in her July 1, 2018 letter. Respondent stated that, when she submitted her application, she believed her answer was correct and that she did not know that there was a pending action with the Secretary of State. Respondent recalled that, when the case was brought to her attention in 2018 after the Secretary of State "sent something to [her]," she agreed to "let that go." She noted that it was "not top priority to fight for [her notary commission] because it was not [her] number one source of income." Respondent testified that she does not remember being served with the Accusation in or around May of 2017, and she denied ever filing a Notice of Defense in that action.

9D. The evidence indicates that the Accusation was served on Respondent and that she filed a Notice of Defense. (See Factual Finding 6B.) However, the timing of that documentary exchange likely occurred when Respondent was dealing with her criminal probation requirements, including a 60-day incarceration, and working on regaining custody of her son. (See Factual Finding 10.) Consequently, it is plausible that Respondent did not recall her May/June 2017 document exchange until she was re-contacted by the Secretary of State following the filing of her application.

9E. Respondent's answer to Question (N) constituted a misstatement of material fact on her application. However, the evidence established that, at the time Respondent filled out her application, she did not recall the pending action against her notary commission, and her answer to Question (N) was not made with the intention to deceive the Department.

Respondent's Rehabilitation Evidence

10A. Respondent was arrested on February 5, 2017, and her son, who was two years old, was taken from her custody and placed with Child Protective Services. Since her son's father "was not around at that time" (Respondent's testimony), she was her son's only caregiver. After her arrest, Respondent "had so much going on, and [her] sole focus was getting [her] son back," so she concentrated on complying with all requirements to regain custody of her son. She immediately enrolled in services ordered by the Department of Children and Family Services (DCFS) and by the criminal court.

10B. On February 18, 2017, Respondent enrolled in a 52-week parenting education course, which she completed on March 24, 2018. On April 3, 2017, she began individual counseling. On April 27, 2017, she enrolled in an 18-month alcohol education program, which she completed on November 5, 2018. In addition to the weekly meetings for the 18-month program, Respondent also attended Alcoholics Anonymous (AA) meetings. As required by DCFS, Respondent submitted to random drug and alcohol testing for approximately one year, all of which returned negative results. On September 10 and October 28, 2017, Respondent attended the hospital and morgue program visits. She also served 60 days in county jail in lieu of the majority of the court-ordered fines. On September 25, 2017, she regained custody of her son.

10C. Respondent has complied with all of her criminal probation requirements. She is scheduled to remain on probation until April 2021.

11. At the administrative hearing, Respondent testified in a straightforward and cooperative manner. Respondent noted that her 2017 arrest and convictions

"destroyed [her] life." She acknowledged that she failed to timely inform the Department about her conviction and to later disclose the notary case on her application. Respondent noted that she was unaware "that all this stuff was going on, [and] it took time for things to be brought to [her] attention." She was grateful to have obtained a restricted RES license, and she willingly relinquished her notary commission for which she intends to re-apply after completion of her criminal probation.

12. Respondent no longer consumes alcoholic beverages. She has continued attending counseling once per month which helps her to address her alcohol use and has taught her how to "stay mentally healthy." Respondent is also active in her church, which she rejoined following her 2017 arrest, after several years away. Through her church, Respondent participates in a recovery group once per month and a women's support group once per week.

13. Respondent is employed full-time at 6550 Realty Group. Her broker of record, Anthony Tavera, is aware of the Department's Statement of Issues against Respondent, and he is willing to supervise her as a restricted licensee.

14. Respondent is seeking an MLO endorsement so that she can increase her income.

LEGAL CONCLUSIONS

1.e Business and Professions Code section 10166.05 mandates denial of a mortgage loan originator license endorsement if the applicant fails to meet specified requirements. Section 10166.05 provides, in pertinent part:

[T]he [real estate] commissioner shall not issue a license endorsement to act as a [MLO] to an applicant unless the commissioner makes all of the following findings:

(a) The applicant has never had a [MLO] license revoked in any governmental jurisdiction. . . .

(b)(1) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony . . . , if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. . . .

(2) For purposes of this subdivision, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this subdivision or subdivision (c).

(c) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a

determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the article.

(d) The applicant has complied with the education and written testing requirements in Section 10166.06.

2. California Code of Regulations, title 6, section 2945.2, provides in pertinent part:

(b) Where a real estate licensee was subject to a real estate license discipline action filed by the Bureau on January 1, 2010, or later, resulting in a revocation, a suspension, a voluntary surrender of a real estate license, a public reproof, and/or a bar order, such discipline alone may be cause for denial of a subsequent mortgage loan originator license endorsement.

(c) A disciplinary action resulting in the revocation of a real estate license with an immediate right to a restricted real estate license shall not constitute a revocation for purposes of invoking a lifetime ban from holding a mortgage loan originator license endorsement.

3. Business and Professions Code section 10166.051 provides, in pertinent part:

In addition to any penalties authorized by regulations . . . , the commissioner may do one or more of the following, after appropriate notice and opportunity for hearing:

(a) Deny, suspend, revoke, restrict, or decline to renew a mortgage loan originator license endorsement for a violation of this article, or any rules or regulations adopted hereunder.

(b) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license endorsement, if an applicant or endorsement holder fails at any time to meet the requirements of Section 10166.05 or 10166.09, or withholds information or makes a material misstatement in an application for a license endorsement or license endorsement renewal.

4. Cause exists to deny Respondent's application for a mortgage loan originator license endorsement, pursuant to California Code of Regulations, title 6, section 2945.2, subdivision (b), based on Respondent's prior RES license discipline, as set forth in Factual Finding 4, and Legal Conclusion 2.

5. Cause exists to deny Respondent's application for a mortgage loan originator license endorsement, pursuant to Business and Professions Code section 10166.05, subdivision (c), based on her 2017 criminal convictions for driving with a blood alcohol content over .08 percent and child endangerment, which demonstrate a

lack of character and general fitness as to command the confidence of the community, as set forth in Factual Finding 4B and Legal Conclusion 1.

6. Cause exists to deny Respondent's application for a mortgage loan originator license endorsement, pursuant to Business and Professions Code section 10166.051, subdivision (b), based on her making a material misstatement in an application for a license endorsement by failing to disclose the Secretary of State's actions against her notary commission, as set forth in Factual Finding 9 and Legal Conclusion 3.

7A. Cause exists to deny Respondent's application for a mortgage loan originator license endorsement, pursuant to Business and Professions Code sections 10166.051, subdivision (b), based on her making a material misstatement in an application for a license endorsement by failing to disclose the stayed revocation of her RES license, as set forth in Factual Finding 8 and Legal Conclusion 3.

7B. Complainant also alleges that cause exists to deny Respondent's application for a mortgage loan originator license endorsement, pursuant to Business and Professions Code 10166.05, subdivision (c), based on Respondent's failure to disclose the stayed revocation of her RES license, which Complainant alleges demonstrates a lack of "such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the article." This basis for denial was not established by the evidence. While Respondent failed to disclose the stayed revocation of her RES license, this was due to her confusion over the language of the Commissioner's Decision and her mistaken understanding that, since her RES license was active and restricted, it had not been revoked. Although Respondent did not disclose the stayed revocation of her

license, she did disclose that it had been restricted, illustrating her lack of intent to deceive the Department in her application. Consequently, Respondent's incorrect responses and failure to disclose the stayed revocation of her RES license in her application did not demonstrate a lack of financial responsibility, character, or general fitness.

8A. Complainant has established several bases for denial of Respondent's application. However, Respondent asserts that she is sufficiently rehabilitated and thus deserving of the endorsement, at least on a restricted basis. Respondent bears the burden of establishing rehabilitation sufficient to compel the issuance of the endorsement. (See e.g., *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309; *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221.) The standard of proof is a preponderance of the evidence. (See Evid. Code, § 115.)

8B. The Department has developed a number of criteria to be considered in evaluating whether or not an applicant is rehabilitated for purposes of issuance of a license, or in this case a license endorsement. California Code of Regulations, title 10, section 2911, subdivision (a), sets forth those criteria, which include:

(1) The time that has elapsed since commission of the act(s) or offense(s):

(A) The passage of less than two years after the most recent criminal conviction or act of the applicant that is a cause of action in the . . . Statement of Issues against the applicant is inadequate to demonstrate rehabilitation.

(B) Notwithstanding subdivision (a)(1)(A), above, the two year period may be increased based upon consideration of the following:

(i) The nature and severity of the crime(s) and/or act(s) committed by the applicant.

(ii) The applicant's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee.

[¶] . . . [¶]

(3) Expungement of criminal convictions. [¶]

(5) Successful completion or early discharge from probation or parole.

(6) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the conduct which is the basis [of license denial] is attributable in part to the use of controlled substances and/or alcohol.

(7) Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(8) 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.

(9) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement. [¶] . . . [¶]

(12) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. [¶]

(14) Change in attitude from that which existed at the time of the conduct in question as evidenced by [testimony of the applicant; evidence from family members, friends, probation or parole officers, or psychiatrists; and the absence of subsequent convictions] which reflect an inability to conform to societal rules when considered in light of the conduct in question.

8C. In this case, Respondent's 2017 criminal convictions were incurred just five years after her first criminal conviction, and they are recent, occurring only two and one-half years ago. The offenses giving rise to her 2017 convictions are serious and involved abuse of alcohol (her second DUI) and endangerment of her child. Additionally, Respondent remains on criminal probation until 2021.

8D. However, following Respondent's 2017 convictions, the Commissioner granted Respondent a restricted RES license, and she has sustained no further convictions. Respondent's failure to disclose the pending notary action and the stayed revocation of her RES license were due to the distraction of her child custody efforts and her misunderstanding of the language of the Commissioner's Decision instead of any intent to deceive. In the years since her 2017 convictions, Respondent has

engaged in sustained efforts to rehabilitate herself (e.g., abstinence from alcohol consumption, attending AA meetings, submitting to random drug and alcohol testing for a year, completion of a 52-week parenting education course and an 18-month alcohol education program, and participating in individual counseling). Based on Respondent's compliance with a number of requirements, she has regained custody of her son and is fulfilling her parental responsibilities. Respondent has maintained her sobriety, and she continues to attend individual counseling sessions and support group meetings at her church. She also has the support of her broker of record. Additionally, Respondent's straightforward testimony and her sustained actions since her 2017 arrest demonstrate her change in attitude from that which existed at the time of her 2017 DUI and indicate the likelihood of her continued compliance with the law.

9.e Given the foregoing, Respondent has established sufficient rehabilitation such that a restricted MLO endorsement is warranted at this time.

ORDER

Respondent Alyssa Claire Johnson's application for a mortgage loan originator endorsement is denied; provided, however, a restricted mortgage loan originator endorsement shall be issued to Respondent pursuant to Business and Professions Code section 10156.5. The restricted endorsement issued to Respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The endorsement 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 endorsement 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 mortgage loan originator endorsement nor the removal of any of the conditions, limitations or restrictions attaching to the restricted endorsement until three years have elapsed from the date of issuance of the restricted endorsement to Respondent.

3. With any application for license or endorsement, 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 endorsement; 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 endorsement and shall be grounds for the suspension or revocation of that endorsement.

DATE: November 12, 2019

DocuSigned by:
Julie Cabos-Owen
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JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings