

MAY 11 2023

DEPT. OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of:) DRE No. H-42454 LA
)
 LINDA LEXION WASHINGTON,) OAH No. 2023010536
)
)
 Respondent.)

The Proposed Decision dated April 4, 2023, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Proposed Decision, Page 1, Line 7, reads as, "...November 17, 2022..." corrected as, "...March 6, 2023..."

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 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 MAY 31 2023.

IT IS SO ORDERED 4.5.23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

A black rectangular redaction box covers the signature of the Commissioner. To the left of the box is a blue handwritten letter 'E'. To the right of the box is a blue handwritten number '7'.

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

In the Matter of the Application of:

LINDA LEXION WASHINGTON, Respondent.

Agency Case No. H-42454 (Statement of Issues)

OAH No. 2023010536

PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 6, 2023.

Andrea Bentler, Counsel, Department of Real Estate (Department), represented complainant Jason Parson, a Supervising Special Investigator of the Department.

Respondent Linda Lexion Washington represented herself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 17, 2022.

SUMMARY

Respondent applied for a real estate salesperson license, and the Department's background review revealed she had been convicted of 10 felony criminal offenses

between 1977 and 2011. Complainant alleges the criminal convictions are grounds for the Commissioner to deny the application. Respondent contends her criminal history is remote in time and she is a changed and rehabilitated person who is fit for licensure. Considering the Department's criteria of rehabilitation, respondent has made a sufficient showing of rehabilitation to prove she should receive a restricted real estate salesperson license.

FACTUAL FINDINGS

Background and Procedural History

1. On June 4, 2021, the Real Estate Commissioner (Commissioner) received respondent's application for a real estate salesperson license. The application is pending, and no license has been issued.

2. A background review revealed respondent had a criminal history that included multiple felony criminal convictions. On December 7, 2022, complainant filed a Statement of Issues in his official capacity alleging the criminal convictions were cause for the Commissioner to deny respondent's application under Business and Professions Code sections 475, 480, and 10177. Respondent submitted a Notice of Defense on Application requesting a hearing.

Hearing

3. Complainant presented court records proving respondent was convicted of 10 felony criminal offenses between 1977 and 2011:

- On November 15, 1977, after pleading guilty in the Superior Court of California, County of San Bernardino, Case No. CR34237, respondent was

convicted of burglary in the second degree. (Pen. Code, § 459.) The court withheld pronouncement of judgment and placed respondent on supervised probation for two years.

- On May 1, 1989, in the Superior Court of California, County of San Bernardino, Case No. SCR46971, respondent was convicted of burglary and forgery. (Pen. Code, §§ 459, 470.) The court sentenced respondent to serve two years in state prison.
- On January 5, 2000, after pleading guilty in the Superior Court of California, County of Riverside, Case No. RIF086947, respondent was convicted of petty theft with a prior burglary conviction. (Pen. Code, § 666.) The court suspended imposition of sentence and placed respondent on formal probation for 36 months, on terms and conditions requiring her to serve 150 days in the custody of the Riverside Sheriff's Office (with credit for two days of time served) and to pay fines and fees.
- On November 16, 2004, after pleading guilty in the Superior Court of California, County of San Bernardino, Case No. FWV032539, respondent was convicted of knowingly receiving stolen property. (Pen. Code, § 496, subd. (a).) On January 7, 2005, the court placed respondent on formal probation for 48 months, on terms and conditions requiring her to serve 365 days in jail (with credit for 230 days of time served), to stay away from all Robinsons-May Department Stores, and to pay fines and fees.
- On July 15, 2011, in the Superior Court of California, County of Riverside, Case No. RIF146075, respondent was convicted of identity theft. (Pen. Code, § 530.5, subd. (a).) The case concerned respondent's commission of identity

theft in August 2008. The court placed respondent on formal probation for 36 months, on terms and conditions that required her to serve 120 days in the custody of the Riverside Sheriff's Office, with 100 days to be served in a work release program. The court credited respondent with time served of 10 actual days and 10 days pursuant to Penal Code section 4019. The court also ordered respondent to pay victim restitution as ordered by the probation department, plus fines and fees.

- On July 15, 2011, in the Superior Court of California, County of Riverside, Case No. RIF149988, respondent was convicted of driving or taking a vehicle without consent, and three violations of possessing a fake driver license or identification card. (Veh. Code, § 10851, subd. (a); Pen. Code, § 470, subd. (b).) The case concerned respondent's commission of these crimes in January 2009. The court placed respondent on formal probation for 36 months, on terms and conditions that included 120 days in the custody of the Riverside Sheriff's Office, with 107 days to be served in the Work Release Program. The court credited respondent with time served of seven actual days and six days pursuant to Penal Code section 4019, to be served concurrently with Case No. RIF146075. The court also ordered respondent to pay victim restitution as ordered by the probation department, plus fines and fees.

4. Respondent testified she has changed her life for the better since her last criminal conviction. While her criminal history is "horrible," she has completed her criminal case obligations and received counseling, taken counselor training courses at a local college, and become a better person. The counselor training courses were "more for herself" than part of a plan to work as a counselor. Respondent also volunteered at a sober living facility for two years beginning in early 2014, and she has

operated a group home, owned a hair salon, and worked in credit repair and marketing. While she understands why the Department would question her integrity given her past, she is now a person of integrity and would never harm a real estate client.

5. In support of her application, respondent presented letters of recommendation from family members and a friend describing respondent as honest, responsible, caring, and a person of faith after making mistakes earlier in life. A person who trained respondent in loan processing also wrote a letter describing respondent as an excellent student.

LEGAL CONCLUSIONS

Legal Standards

1. In this application proceeding, respondent bears the burden of proving that she should receive the requested license. (*Coffin v. Alcoholic Beverage Control Appeals Board* (2006) 139 Cal.App.4th 471, 476-477; Gov. Code, § 11504.) This burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

2. An applicant's conviction of a crime that is "substantially related to the qualifications, functions, or duties" of a real estate licensee may constitute grounds for the Commissioner to deny the application. (Bus. & Prof. Code, §§ 475, subd. (a)(2), 480, subd. (a)(1), 10177, subd. (b); undesignated statutory references are to the Business and Professions Code[.]) As relevant here, a crime may be deemed to be substantially related to a real estate licensee's qualifications, functions, or duties if it involves: "(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person. [¶] (2) Counterfeiting, forging or altering of an

instrument or the uttering of a false statement. [¶] . . . [¶] (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end. [¶] . . . [¶] (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.” (Cal. Code Regs., tit. 10, § 2910, subd. (a).) “The nature and gravity of the offense, the number of years that have elapsed since the date of the offense, and the nature and duties of a real estate licensee shall be taken into consideration when determining whether to deem an offense to be substantially related to the qualifications, functions or duties of a licensee.” (*Id.*, subd. (c).)

3. For most professional and occupational licenses, the applicant’s criminal conviction must have been “within the preceding seven years . . . regardless of whether the applicant was incarcerated,” or the crime must be one “for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years” (§ 480, subd. (a)(1).) But for real estate and certain other license applicants, the seven-year limitation does not apply if “[t]he applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the [Department]” (*Id.*, subd. (a)(1)(B).) The seven-year limitation also does not apply if “[t]he applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.” (*Id.*, subd. (a)(1)(A))

4. “A financial crime, as referenced in Business and Professions Code Section 480(a)(1)(B), is any crime where the applicant did one or more of the following

in the commission of a criminal offense: [¶] (1) Obtained money, property, or services. [¶] (2) Deprived their victim of money, property, or services. [¶] (3) Engaged in acts involving mishandling of money, property, or services, including but not limited to money laundering. [¶] (4) Committed an act of fraud, dishonesty, a breach of trust, or money laundering, as those terms are referenced in the United States Code Service at Title 12, Section 5104(b)(2)(B)." (Cal. Code Regs., tit. 10, § 2910.5, subd. (b).) Crimes fitting this definition "are directly and adversely related to the fiduciary qualifications, functions, or duties of a licensee" for purposes of section 480, subdivision (a)(1)(B). (Cal. Code Regs., tit. 10, § 2910.5, subd. (a).)

5. Notwithstanding the above, the Commissioner may not deny a license due to a criminal conviction or the acts underlying it if the conviction has been dismissed, or if the applicant "has obtained a certificate of rehabilitation . . . , has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482." (§ 480, subds. (a)(2), (b).) The Commissioner evaluates an applicant's showing of rehabilitation by applying the Department's criteria of rehabilitation. (§ 482, subds. (a), (b); Cal. Code Regs., tit. 10, § 2911.) "The [Department] has developed 14 criteria to be used to evaluate rehabilitation of an applicant for a license who has committed a crime. (Cal. Code Regs., tit. 10, § 2911.) These criteria attempt to gauge whether the applicant has changed so that a repeat of his criminal behavior is unlikely." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

Analysis

6. Respondent's criminal convictions are "substantially related to the qualifications, functions, or duties" of a real estate licensee. (§§ 480, subd. (a)(1), 10177, subd. (b).) Respondent's various crimes involved "[t]he fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person,"

"forgery," "[t]he employment of . . . fraud, deceit, falsehood or misrepresentation to achieve an end," and the "[d]oing 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." (Cal. Code Regs., tit. 10, § 2910, subd. (a).) Although respondent's last crimes were in January 2009, the nature and gravity of the offenses evidence a pattern of dishonesty and a lack of integrity for many years beforehand. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee;" indeed, "honesty and integrity are deeply and daily involved in various aspects of the [real estate] practice." (*Go/de v. Fox* (1979) 98 Cal.App.3d 167, 176.) Respondent's 10 felony offenses over many years evidence an absence of those qualities and are substantially related to her fitness for licensure, despite the passage of time.

7. Furthermore, respondent was convicted of "financial crime[s] currently classified as . . . felon[ies] that [are] directly and adversely related to the fiduciary qualifications, functions, or duties" of a real estate licensee. (§ 480, subd. (a)(1)(B).) All of respondent's crimes are classified as felonies, and they involved acts of fraud and dishonesty and obtaining money or property in the commission of the crimes. Therefore, the seven-year limitation specified in section 480 on the use of criminal convictions in license application proceedings does not apply. (*Ibid.*)

8. Given the above, the Commissioner may deny respondent's application due to the criminal convictions absent dismissal of the convictions, a certificate of rehabilitation, a grant of clemency, a pardon, or a showing of rehabilitation under section 482. (§§ 475, subd. (a)(2), 480, subd. (a)(1), 10177, subd. (b).) Respondent contends she has made a showing of rehabilitation, and the Commissioner must

evaluate that showing by considering the Department's criteria of rehabilitation. (Cal. Code Regs., tit. 10, § 2911.) The evidence presented about those criteria is as follows:

(1) The time that has elapsed since commission of the acts(s) or offense(s). Over 14 years have elapsed since respondent's last crime, and almost 12 years have elapsed since her last criminal conviction. The time elapsed since respondent's criminal conviction exceeds the period of less than two years that the Department considers "inadequate to demonstrate rehabilitation." (Cal. Code Regs., tit. 10, § 2911, subd. (a)(1)(A).) The two-year period may be extended based on the nature and severity of the crimes and an applicant's criminal history. (*Id.*, subd. (a)(1)(B).) These considerations warrant an extension of the two-year period in respondent's case, but not to 14 years.

(2) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant, or escheat to the State of these monies or other properties if the victim(s) cannot be located. Some of the criminal court records reference victim restitution, but no evidence was presented as to what restitution was ordered or paid. Respondent testified she satisfied all her criminal case obligations.

(3) Expungement of criminal convictions. Respondent's criminal convictions have not been expunged.

(4) Expungement or discontinuance of a requirement of registration pursuant to the provisions of section 290 of the Penal Code. This criterion is inapplicable in this case because it concerns registration for persons convicted of certain sex-related offenses.

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

Respondent testified she successfully completed probation and parole in her criminal cases, and the court records include no entries to the contrary.

(6) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the conduct which is the basis to deny the Department action sought is attributable in part to the use of controlled substances and/or alcohol.

Respondent's crimes were not shown to be attributable to the use of controlled substances or alcohol.

(7) Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment. Respondent testified she satisfied her criminal case obligations, and complainant presented no evidence to the contrary.

(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 Department action sought. Respondent's letters of recommendation from relatives describe her as a caring and responsible family member.

(9) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement. Respondent completed multiple college-level counselor training courses, although she testified the courses were more for herself than for economic self-improvement to work as a counselor. She also completed training in loan processing.

(10) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others. No evidence was presented of adjudicated debts or

monetary obligations of respondent to others, apart from the criminal case obligations discussed above.

(11) Correction of business practices resulting in injury to others or with the potential to cause such injury. The evidence does not indicate that respondent's crimes were related to business practices.

(12) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. Respondent presented evidence she volunteered at a sober living facility for two years starting in early 2014.

(13) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the Department action sought. The record does not include evidence on this issue.

(14) Change in attitude from that which existed at the time of the conduct in question. Of the many criteria, change in attitude is "arguably the most important in predicting future conduct" (*Singh v. Davi, supra*, 211 Cal.App.4th at p. 149.) Respondent acknowledged her prior wrongdoing and testified she is a changed person. Her letters of recommendation from family members and a friend lend support to that testimony. The absence of any criminal convictions after 2011 also evidences a change in attitude. (Cal. Code Regs., tit. 10, § 2911, subd. (a)(14)(E).)

9. Considering the above, respondent's showing of rehabilitation satisfies most of the relevant criteria. Over 14 years have elapsed since respondent's last criminal offense, and she has fulfilled her criminal case obligations. Her evidence also demonstrates a change in attitude from that which existed at the time of the crimes. Respondent acknowledges her wrongdoing and presented evidence that she has

changed her life for the better. While respondent's crimes were dishonest and serious, the nature and severity of the crimes do not justify extending the time period that the Department considers inadequate to demonstrate rehabilitation from two years to over 14 years. (Cal. Code Regs., tit. 10, § 2911, subd. (a)(1)(B).)

10. Not all of the Department's criteria are satisfied; none of respondent's convictions have been expunged, and the record does not include evidence as to whether respondent has new and different social and business relationships. But with many criteria satisfied, outright denial of licensure is not justified. Instead, a restricted real estate salesperson license under Business and Professions Code section 10156.5 is the appropriate result, with an extended period of restriction during which an employing broker must closely supervise respondent's performance as a licensee.

ORDER

Respondent Linda Lexion Washington's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license 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 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:

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

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

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until five 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.

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 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.

DATE: 04/04/2023


Thomas Heller (Apr 4, 2023 15:21 PDT)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings