

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

DEC 08 2023

DEPT. OF REAL ESTATE

By: 

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In the Matter of the Application of:) DRE No. H-42612 LA
MARGARET LORAIN CALDERON) OAH No. 2023080133
Respondent.)

DECISION

The Proposed Decision dated November 01, 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.

Page 1, Paragraph 3, "Respondent Margaret Loraine Hall" is corrected to read "Respondent Margaret Loraine Calderon".

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 12/28/2023

IT IS SO ORDERED 12/1/23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

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

In the Matter of the Statement of Issues Against:

MARGARET LORAIN CALDERON,

Respondent.

Agency Case No. H-42612 LA

OAH No. 2023080133

PROPOSED DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 2, 2023.

Kevin H. Sun, Counsel for the Department of Real Estate (Department), represented Jason Parson (complainant), in his official capacity as a Supervising Special Investigator of the State of California.

Respondent Margaret Loraine Hall (respondent) appeared on her own behalf.

Oral and documentary evidence was received. At the conclusion of the hearing, the record remained open by stipulation for respondent to submit character reference letters as administrative hearsay and for complainant to have an opportunity to provide any additional objections. The character reference letters were timely filed and

served and admitted as administrative hearsay. The record was closed and the matter was submitted for decision on October 16, 2023.

SUMMARY

Respondent applied for a real estate salesperson license in July 2022. Respondent was convicted in several criminal matters from 2011 to 2016 and disclosed the criminal convictions in her application. Complainant contends the criminal convictions are grounds to deny the application. Sufficient evidence of respondent's rehabilitation was submitted to grant her a restricted salesperson license.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 21, 2022, respondent submitted an application to the Department for a real estate salesperson license. Respondent passed her licensing exam on July 11, 2022. The Department notified her she successfully passed her real estate salesperson examination on August 16, 2022 and would be reviewing her application. (Ex. 1.)

2. Complainant in his official capacity served the Statement of Issues dated July 17, 2023 the next day on respondent. Complainant filed the Statement of Issues with the Office of Administrative Hearings on September 22, 2023, at 5:27 p.m. after receipt of respondent's timely Notice of Defense on Application and request for administrative hearing. (Ex. 1.)

3. All jurisdictional requirements were met.

The Criminal Convictions

2012 MISDEMEANOR CONVICTION

4. On March 29, 2012, was convicted on her plea of guilty of shoplifting, a misdemeanor. (Mesa Municipal Court, County of Maricopa, State of Arizona, Case No. 2012024306.) Respondent was ordered to pay a fine in the amount of \$300. (Ex. 6.) Respondent explained on the Department's Conviction Detail Report she stole food from a store because she was hungry and did not have any money. (Ex. 8.)

2013 FELONY CRIMINAL CONVICTIONS & 2017 RE-SENTENCING

5. On October 10, 2012, in the Superior Court of Arizona, Maricopa County, case number CR2012-008498 respondent was the subject of a felony complaint/indictment for three felony counts of violation of Arizona statutes (theft of credit card or obtaining credit card by fraudulent means) and one felony count of violation of Arizona statutes (aggravated taking identity of another). (Ex. 3.)

6. On January 17, 2013, the felony complaint was amended to include lesser felony counts for violation of Arizona statutes (attempted theft of credit card or obtaining a credit card by fraudulent means). (Ex. 3.)

7. On January 17, 2013 respondent was convicted on her plea of guilty for violation of lesser felony counts for attempted theft of credit card and obtaining a credit card by fraudulent means. (Ex. 3, pp. A58-A62.) Respondent was ordered to pay fines and fees and restitution to the three victims, \$154 (victim MS), \$200 (victim AK), and \$503 (victim AR) on a payment schedule. (Ex. 3. pp. A59, A74-A75.) Respondent was sentenced to a term of imprisonment for a period of one year for each count, to

run concurrently, with credit for each count in the amount of 125 days, to pay restitution and court assessments and charges. (Ex. 3, pp. A73-A75.)

8. The circumstances of the conviction are between March 7 through March 16, 2012, respondent, drove her accomplice, who physically stole the purses of the victims, and with her accomplice secured and/or controlled the credit card in the name of three other people without their consent and by using their personal information without consent. (Ex. 4.) At the time of her arrest, respondent was employed at a restaurant chain, had a monthly net income of about \$700. When confronted by the police, respondent admitted her crimes. She admitted she was under the influence of drugs and did not recall her actions. She requested probation with substance abuse treatment. She did not want to be around other criminals and as it was her first offense. Based upon the court's screening tools, the court assessed her as a medium to low risk for reoffending and did find her eligible for drug abuse treatment. The investigative officer recommended three years supervised probation with substance abuse testing and treatment. (Ex. 3.)

2011 Conviction in Aggravation of 2013 Convictions

9. Respondent had no prior felony convictions. However, on December 20, 2011, at the time of her arrest for the felonies above, respondent pled guilty to a misdemeanor for possession of drug paraphernalia and an infraction for driving without a valid license. Respondent paid fines as part of her agreement. (Chandler Municipal Court, County of Maricopa, State of Arizona, Cases No. 11-C-3718331A and 11-C-3718331.) (Ex. 5.)

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2016 MISDEMEANOR CONVICTIONS

10. On April 4, 2016, in the Superior Court of California, Orange County, West Justice Center, Case No. 16WM04506, a criminal complaint was filed against respondent and other defendants. Respondent was named in two counts: violating Health and Safety Code section 11364, subdivision (a) (possession of controlled substance paraphernalia – opium pipe), and Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance – methamphetamine), misdemeanors. (Ex. 7.)

11. On June 23, 2016, on her plea of guilty, respondent was convicted in the Superior Court of California, Orange County, Case No. 16CM03466 for violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance), a misdemeanor. (Ex. 7.) Respondent was ordered to serve time and pay fines and fees as set forth in finding 12.

12. From the court records it appears the 2016 cases were resolved together. On June 23, 2016, respondent pled guilty to Case No. 16WM04506. The court ordered respondent to serve six days in Orange County Jail, with the sentence to run concurrent with Case No. 16M03466 in addition to fines and fees. Respondent was given credit for time served, three actual and three conduct. The Court ordered the balance of fines and fees deemed paid. (Ex. 7.)

13. The convictions described in factual findings 4 through 12, by their facts and circumstances, bear a substantial relationship to the qualifications, functions or duties of a real estate licensee, (California Code of Regulations, title 10, (Regulations) section 2910.)

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Evidence of Rehabilitation

14. Respondent completed and signed an Interview Information Statement form (RE 515), dated September 7, 2022. (Ex. 8.) On this form, respondent disclosed the criminal convictions noted above. Respondent also submitted Conviction Detail Report forms (RE 515D) which referenced each conviction (*id.* at pp. A138-A142), as well as her letter and statement of history and rehabilitation (*id.* at pp. A250-A254).

15. Respondent met the terms of her probation and sentencing for her convictions and has paid all restitution and fines. There is insufficient evidence of any dismissal or expungement of the criminal offenses.

16. Respondent clearly and plainly admitted to her convictions, which she fully disclosed to the Department. During the hearing, it was clear by her demeanor, she was sincere, honest and remorseful about her past, and had turned her life around. She was candid about her methamphetamine addiction and was able to align her criminal history with her years of substance abuse, primary methamphetamine. Her testimony during the hearing was consistent with her statements to the Department in her Interview Information Statement and Conviction Detail Report.

17. Respondent's crimes occurred during a long, five-year period of substance abuse and poverty between 2011 and 2016. She did not excuse her crimes. Notably, her subsequent conduct demonstrated she learned "change is possible if you truly want it." (Ex. 8, p. A136.)

18. During her testimony respondent quickly and without hesitation was able to provide her sobriety date, February 6, 2017. She did not go to a rehabilitation program. She just decided to quit. She has participated in Narcotics Anonymous and although she does not go to regular meetings remains in contact with the program.

She just decided to quit. Respondent explained her problems began when she entered college at 17 years of age. She was impressionable, joined the "wrong crowd" and started to abuse drugs. On February 6, 2017 she left the state and moved to Texas to live with her mother to be in a new environment and in her words "get her life together." (Respondent testimony.)

19. Respondent pursued her college education. She obtained an Associate of Arts and Bachelor of Science in Business, and also obtained a certificate in Project Management.

20. She moved to California in early June 2021. She has two biological children, ages two and five. Along with her husband they share six children, including two in college and two married children. She is active in the church and involved with her children.

21. Respondent was inspired by her family to pursue a real estate salesperson license. She wants to show them anything is possible and that anyone can turn their lives around.

22. Respondent understands the responsibilities attendant to being in business general, and the real estate business, in particular. When she first moved to California she worked with her father who owns a tile company. She was introduced to the business of real estate by working with Squire Realty as a transaction coordinator performing administrative work including paperwork and phone calls. She informed her employer during her interview of her background. She works another job in addition to the job at Squire Realty to support her family.

23. Respondent obtained several written character references which supported and explained her statements and testimony about her rehabilitation, and

were admitted as administrative hearsay. (Gov't Code § 11513.) The references were signed under penalty of perjury before a notary public.

24. Cassie Gallegos, a licensed real estate salesperson for 10 years, has known respondent for about two years at Square Realty. Respondent works closely with Ms. Gallegos. Ms. Gallegos considers respondent's work ethic and work performance excellent and is especially impressed with respondent's ability to work more than one job in order to support her children. According to Ms. Gallegos respondent "is quick witted, smart, direct, and always gets the job done." She "highly" recommends respondent as a real estate licensee and would refer clients to her. (Ex. A.)

25. Adam Lopez did not identify his relationship to respondent but based upon his address and his comments it appears he is respondent's spouse. In his letter he describes respondent as committed to "our" family and describes how they share in the raising of their blended family and how respondent "works extremely hard" to financially support the family. Mr. Lopez is the Health and Safety Manager for a company located in Hesperia, California and is responsible for the safety of about 300 employees. He served in the military and had a long career in mining in addition to working after receiving certifications and the appropriate training in firefighting and as a volunteer emergency medical technician. (Ex. B.)

26. Mr. Lopez has known respondent as a next door neighbor to her family since respondent was nine years of age. He knew of her difficult life circumstances and "severe and poor decisions." He has observed her to be regretful of her past and to apply herself to obtain a college education, and to become even more motivated to transform her life when she became a mother. After respondent moved back to California Mr. Lopez witnessed "her drive to push for the good of herself and others

around her." Mr. Lopez confirmed respondent's commitment to obtaining licensure and in closing reinforces respondent's successful rehabilitation: "We can't judge a book by its cover but, by what's inside and in the last ten years she [has] written a great book." (Ex. B.)

27. Kylie Lopez, a life-long friend of 22 years and childhood neighbor, considers respondent a family member, a "big sister." She has known respondent through all phases of her life including when respondent abused drugs, and when she became "clean." Like Mr. Lopez, she has observed respondent's transformation to a dedicated mother, taking her children to extra activities, including reading clubs, and tutoring them. She has observed respondent's determination to support her family and provide them a better life. (Ex. C.)

28. Respondent's father, Vernon Wayne Sartin, wrote of his observations of respondent's character. During her childhood, respondent was involved in school activities, including ballet, was outgoing and kind, happy and obtained satisfactory grades. Prior to her "bad decisions" respondent was a hard-working and responsible wage earner, making her own car payments, paying for her rent, etc.. He has seen her transformation. She is a good mother, "excels at every job she has, but wants a better life for them which is why she is applying for this license which is why she is hoping for the chance to prove she is worthy of this. She has worked very hard with people in real estate and has spent a lot of time studying the many aspects of this field. Given a chance I am sure she will make a great agent. I believe in her 100%.." (Ex. D.)

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LEGAL CONCLUSIONS

1. Under Government Code sections 11504.5 and 11505, a Statement of Issues is to be served on an applicant's address of record. Government Code section 11509 requires a notice of the hearing to be served on an applicant. Government Code section 11520 authorizes a licensing agency to proceed with a hearing if a respondent fails to appear for the hearing. The Department followed all required proceedings to provide notice to respondent. (Factual Findings 1 through 3.)

2. The burden of proof is on the applicant to establish she is entitled to the license. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205; *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.) The standard of proof is a preponderance of the evidence, meaning "the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325, quoting from *People v. Miller* (1916) 171 Cal. 649, 652.)

3. Respondent has not met this burden for issuance of an unrestricted license but has met her burden based on the substantial evidence of her rehabilitation she is entitled to be issued a restricted salesperson license by reason of Factual Findings 14-28.

4. Under Business and Professions Code section 10177, subdivision (b)(1), an application for a real estate license may be denied if the applicant was convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

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5. Similarly, under Business and Professions Code sections 475, subdivision (a)(2), and 480, subdivision (a)(1), an application can be denied for the applicant's conviction of a crime that is substantially related to the qualifications, functions, or duties of a licensee.

6. Under Business and Professions Code sections 475, subdivision (a)(3), and 480, subdivision (a)(2), an application can be denied if the applicant has done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit herself.

7. Under California Code of Regulations, title 10 (Regulations), section 2910, subdivision (a), as relevant here, a crime or act is substantially related to the qualifications, functions, or duties of a real estate licensee if it involves: the fraudulent obtaining or taking of property belonging to another person (subd. (a)(1)); the alteration of an instrument (subd. (a)(2)); the employment of fraud (subd. (a)(4)); or the doing of any unlawful act with the intent to confer a financial benefit upon the perpetrator or intent or threat of doing substantial injury to the property of another (subd. (a)(8)).

8. Regulation section 2910, subdivision (c), states, in part: "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."

9. The crimes for which respondent was convicted include the factors of "substantial relationship" noted above and, therefore, the crimes are substantially related to the qualifications, functions, or duties of a real estate licensee under Regulations section 2910, subdivisions (a) and (c).

10. There is cause to deny respondent's application for a real estate salesperson license under Business and Professions Code sections 10177, subdivision (b)(1), 475, subdivision (a)(2), and 480, subdivision (a)(1), because respondent was convicted of crimes that are substantially related to the qualifications, functions, or duties of a real estate licensee, as set forth in Factual Findings 4 through 13 and Legal Conclusions 7 through 9.

11. There is cause to deny respondent's application for a real estate salesperson license under Business and Professions Code sections 475, subdivision (a)(3), and 480, subdivision (a)(2), because respondent was convicted of crimes involving dishonesty, fraud, or deceit with the intent to substantially benefit herself, as set forth in Factual Findings 6 through 12 and Legal Conclusion 6.

12. Dishonesty "denotes an absence of integrity; a disposition to cheat, deceive or defraud" (*Hogg v. Real Estate Commissioner* (1942) 54 Cal.App.2d 712, 717.) "Honesty and integrity are deeply and daily involved in various aspects of [real estate] practice." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176). Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

13. The Department has developed criteria to evaluate the rehabilitation of an applicant for a license who has been convicted of a crime. The relevant criteria, from Regulations section 2911, subdivision (a), are summarized below and applied to respondent as follows:

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Elapsed time since commission of the acts or offense, referencing less than two years as "inadequate to demonstrate rehabilitation": The criminal convictions occurred between 2011 and 2016 with last conviction occurring seven years ago.

Restitution and payment of fines or penalties: Respondent paid full restitution and fines and fees.

Expungement or early discharge from parole: Expungement is most commonly a reference to proceedings in California state courts under Penal Code section 1203.4 for dismissal of charges after all sentence terms are completed. There is insufficient evidence of such a dismissal for the convictions in Arizona and no evidence of expungement for the California conviction.

Enrollment in or completion of educational or training courses for economic self-improvement: Respondent has obtained a college-level degree.

Correction of any business practices causing injury or potential injury: Respondent's creation and use of false documents, fraud, and theft crimes were seemingly the result of drug addiction, bad decisions and financial pressure arising from her drug addiction. Respondent became sober, is no longer connected to individuals in her past, graduated from college, made progress pursuing her chosen career in real estate, and has taken reasonable steps to avoid similar actions in the future.

Change in attitude from the time of the conduct in question to the present, as demonstrated by evidence of rehabilitation from respondent or others, and the absence of subsequent convictions or other conduct which reflect an inability to conform to societal rules when considered in light of the conduct in question: Respondent provided evidence of her rehabilitation in the form of her own testimony,

and written statements and support letters from others. Respondent's last conviction was in 2016. There was no evidence respondent has engaged in any conduct since 2016 to raise concerns about her level of rehabilitation.

14. "Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living" can be helpful in determining whether a person seeking licensure is rehabilitated. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317-318.) The numerous support letters submitted by respondent to the Department confirm a consistent and longstanding effort by respondent, to assist others.

15. Several court opinions address significant aspects of rehabilitation. Rehabilitation is a state of mind, and the law looks with favor upon one who has achieved reformation and regeneration with the reward of the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070; *In re Menna* (1995) 11 Cal.4th 975, 991.)

16. As discussed in *Singh v. Davi* (2012) 211 Cal.App.4th 141, 149, of the many rehabilitation criteria, arguably the most important in predicting future conduct is the one related to change in attitude from that which existed at the time of the conduct in question. Respondent meets most of the rehabilitation criteria, and she exhibited a change in attitude from the time of her misconduct. In determining whether a real estate licensee was a threat to the public, the significant factors considered have included: (1) the likelihood of recurrence of the crime; (2) whether the

person led an exemplary life before and after the incident which led to the conviction; and (3) whether the person was contrite and remorseful. (*Brandt v. Fox* (1979) 90 Cal.App.3d 737, 745-747).

17. Rehabilitation depends upon a record of conduct that convinces the Department the public would be safe in granting privileges of licensure to respondent. A respondent must establish a record of reliable, responsible, and consistently appropriate conduct.

18. The sheer number and circumstances of respondent's criminal convictions, and the rehabilitation criteria she has satisfied, are not sufficient to grant her an unrestricted license at this time in a manner consistent with protection of the public. Nevertheless, the likelihood respondent will reoffend is low. She is more mature, is sober, and has learned from her mistakes. Respondent accepts responsibility for her actions and has expressed remorse. The public will be adequately protected if respondent is issued a restricted salesperson license, as the restricted license requires respondent to be supervised in her performance of activities that require the license, and respondent's supervisor must be notified of the decision in this matter. The restricted license will be in effect for two years.

19. Under Business and Professions Code sections 10156.5 and 10156.6, the Commissioner may issue a restricted license with conditions and a limited term. Under Business and Professions Code sections 10156.7, a restricted license does not confer any property right to the holder, and it may be suspended without a hearing pending final determination after a hearing. Standard terms for a restricted license are found in Regulations section 2930 and are included in the Order below.

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ORDER

The application of respondent Margaret Loraine Calderon for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. The restricted 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:

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

The receipt of evidence 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 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:

The employing broker has read the Decision which is the basis for the issuance of the restricted license; and

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: 11/01/2023



EILEEN COHN

Administrative Law Judge

Office of Administrative Hearing