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MAR 05 2024

DEPT. OF REAL ESTATE

By _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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| In the Matter of the Application of: |) | DRE No. H-42692 LA |
| |) | |
| SONIA DE LOS ANGELES PEREZ, |) | OAH No. 2023100586 |
| |) | |
| Respondent. |) | |

DECISION

The Proposed Decision dated February 7, 2024, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent.


Pursuant to Government Code Section 11521, the 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 March 25, 2024.

IT IS SO ORDERED 2/26/24

Chika Sunquist
REAL ESTATE COMMISSIONER


By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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

In the Matter of the Statement of Issues Against:

SONIA DE LOS ANGELES PEREZ, Respondent.

Agency Case No. H-42692 LA

OAH No. 2023100586

PROPOSED DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on January 9, 2024.

Diane Lee, Staff Counsel, represented Jason Parson, who filed the Statement of Issues in his official capacity as a Supervising Special Investigator of the State of California for the Department of Real Estate (Department). Sonia De Los Angeles Perez, respondent, represented herself.

Documents and testimony were received in evidence. The record closed and the matter was submitted for decision on January 9, 2024.

STATEMENT OF THE CASE

In August 2021 respondent submitted a Salesperson Exam/License Application that the Department sent to the Licensing Background Review Unit. Respondent had

been convicted of misdemeanor welfare fraud in March 2020. The Department considers respondent insufficiently rehabilitated from wrongdoing to be licensed. Respondent acknowledges she should have been more careful in disclosing her husband's income as required, but maintains her rehabilitation is complete, given that her wrongdoing was due in part to confusion and inattention.

FINDINGS OF FACT

1. Complainant served the Statement of Issues on September 26, 2023. Respondent timely requested a hearing when she submitted a Notice of Defense on Application that the Department filed on October 16, 2023.

Application

2. On August 12, 2021, the Department received respondent's Salesperson Exam/License Application. On March 14, 2022, the Department advised respondent upon her passing the real estate Salesperson examination that her application would be sent to the Licensing Background Review Unit for further processing.

Criminal Conviction

3. On March 3, 2020, in the California Superior Court, County of Riverside, case number INF1800736, on her plea of guilty, respondent was convicted of violating Welfare and Institutions Code section 10980, subdivision (c)(2), fraud in obtaining aid of more than \$950, a misdemeanor. Respondent had also been charged with perjury, but that count was dismissed.

4. The court sentenced respondent to one day in jail and to pay restitution to the County of Riverside in an amount not established in the record. However,

respondent testified credibly that she paid all restitution ordered by the court notwithstanding that it was difficult, causing her to incur substantial debt to do so.

Application for Aid

5. The March 15, 2018 Initial Report of the Riverside County Department of Public Social Services (RC DPSS) states that on respondent's application and on semi-annual reporting forms she failed to report income her husband received from two employers in the period June 2015 through November 2017. As a result, respondent received \$14,380 more in food stamps than she was entitled to during the period. The report, summarized below, also set out details of respondent's wrongdoing.

6. The RC DPSS discovered respondent's reporting failures in July 2017 when an Eligibility Technician reviewed a report from the Employment Development Department showing that during the period respondent's husband had earned \$96,132.25. Respondent repeatedly failed to report all of her husband's income during the period.

7. In an application to the RC DPSS on June 22, 2015, when respondent's husband was receiving income from employment, she answered no to the question: "Is anyone working or planning to work in the next two months?" She certified under penalty of perjury that the response was true and correct.

8. In an application interview by telephone on July 15, 2015, an RC DPSS Eligibility Services Clerk explained mandatory reporting requirements while receiving aid and reviewed forms with respondent that she would be required to sign, including RVSD 512B, Planning with You to Avoid Fraud.

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9. When she applied for aid on July 6, 2015, respondent completed and signed the RVSD 512B form. The form explained that a person could be guilty of fraud for telling only part of the truth, or lying, or not providing Eligibility Services personnel all pertinent facts right away. It also stated:

In order to avoid **fraud**, you must report on your Semi-Annual Report Form (SAR7) and Redetermination/Recertification (RD/RC) **any money** you, your spouse, your children or any other person in your household are now receiving or will receive in the future. This includes **any money** from **any source** such as a job . . . or any other source.

(Emphasis in original.)

10. On May 12, 2016, respondent completed and signed the CF37 Recertification Application, answering yes to the question whether anyone was receiving income from employment and reporting her husband's income from the Oasis Homeowners Association (Oasis HOA) in Palm Desert. The RC DPSS denied the application because respondent's household income exceeded the maximum allowable income for a four-person household.

11. On June 29, 2016, respondent submitted an e-Application, answering yes to the question whether anyone was working or planning to work in the next two months and reported her husband's part-time income from the Ritz-Carlton Hotel. But she failed to report income he was receiving from the Oasis HOA.

12. On May 20, 2017, respondent submitted a CF37 Recertification Application, again answering no to the question whether anyone she bought or

prepared food with had earned income from a job. Respondent failed to report income from her husband's jobs at the Oasis HOA and Palm Springs Hospitality.

13. In a telephone application interview with an RC DPSS Eligibility Services Clerk on June 1, 2017, respondent stated and later put in writing under penalty of perjury that her husband had been briefly but was no longer employed by Palm Springs Hospitality. As before, respondent failed to report income her husband was then receiving from jobs at the Oasis HOA and Palm Springs Hospitality.

14. Respondent completed and signed under penalty of perjury the semi-annual SAR7 Eligibility Status Report (SAR7) for October 2015 and October 2016, covering the six-month periods before and after an application or recertification.

15. To the question in the SAR7 asking whether anyone had employment income in the month of the report, respondent answered yes for October 2015, but reported only her income, not income her husband earned from the Oasis HOA. Respondent answered no to this question for October 2016, reporting that her husband's income from the Ritz-Carlton Hotel ended as of August 5, 2016. She reported he was to resume seasonal employment at the Oasis HOA in December 2016. Respondent failed to report her husband's income in October 2016 from the Oasis HOA and Palm Springs Hospitality.

16. The March 15, 2018 RC DPSS Initial Report states in summary that each time respondent applied for benefits, Eligibility Services personnel informed her that she was required to report all household income from any source, but she repeatedly failed to report all such income.

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Respondent's Evidence

17. Respondent expressed shame and remorse for her misconduct. She took some responsibility for not following directions from the RC DPSS on reporting income. But respondent also attempted to minimize her wrongdoing, saying that she found it hard to balance fulfilling her duties as a mother and keeping track of her husband's income, confusing because it was part-time.

18. Respondent and her husband have three children, the oldest 15, the youngest 7 years old. Respondent stated that it was partly because she was so busy taking care of the children that she failed to provide all of the information she was required to report to the RC DPSS.

19. Respondent's husband currently has steady employment as a firefighter. He started that work in 2018 and is currently employed by Cal Fire, the California Department of Forestry and Fire Protection. When respondent applied for welfare her husband's income varied as he was a student and worked part time in the hospitality industry in the low desert. That work is seasonal because there is decreased demand during the hot summer months.

20. Respondent attends classes at College of the Desert in Palm Desert, California, where, as of June 2023, she was placed on the Dean's List with a 4.0 grade point average.

21. Respondent believes that personnel at the RC DPSS are overworked, so that they had difficulty keeping up with or responding to her communications. This difficulty, respondent recalled, was acknowledged by the deputy District Attorney (DA) who prosecuted the case against her at the time of respondent's plea bargain.

22. The deputy DA agreed that the perjury charge against respondent should be dropped and respondent was not incarcerated or put on probation, all because, as respondent asserted, the deputy DA came to believe that respondent was not actually dishonest nor did she have actual intent to deceive but was to some extent a victim of overburdened bureaucracy. Respondent pointed to a report by the RC DPSS that her husband drove an expensive automobile, a BMW, whereas he drove a much less expensive Honda. Respondent believes the mistake occurred in part because her husband and his father have the same name.

23. Respondent is acquainted with a licensee in Indian Wells, Gina Tegland, Berkshire Hathaway, who has expressed some interest in respondent's working at her office if she becomes licensed.

Character References

24. A December 29, 2023 character reference letter from caterer Loreta Mendoza Mosher states that respondent has worked in several positions over the past three years. She describes respondent as a team member, honest, dependable, with a can-do work ethic, who exemplifies a high level of service.

25. Chris Simeone, an executive chef at Seasonal Specialty Services, LLC, in La Quinta, California, wrote on December 6, 2023, that he worked with respondent for two years. She set up events and dealt with customers, including as a server and bartender. He describes her as consistently dependable and highly appreciated by clients.

26. Respondent worked for a property management firm for approximately three years. Her superior at the firm, Archie Hudson, Jr., wrote that she was consistently one of their top property managers. He described respondent as an

extremely proactive sales professional, respected becoming quite adept, as he wrote in Exhibit A, page B6, "at the administrative and compliance side of property management."

27. Respondent's sister, Laura Jimenez, wrote an undated character reference letter. Ms. Jimenez, a real estate agent in Miami, Florida, is the only person providing a character reference who was aware of respondent's conviction. Ms. Jimenez states that she has provided respondent training in real estate over the past several years and believes respondent has an aptitude for the profession as she understands the market, trends and regulations affecting the real estate profession.

LEGAL CONCLUSIONS

1. Complainant presented a prima facie case for denying respondent's application based on her criminal conviction. The burden of proof then shifted to respondent under Evidence Code sections 115 and 500 to demonstrate by a preponderance of the evidence circumstances and good character that warrant issuing her a salesperson license.

2. Under Business and Professions Code sections 475, subdivision (a)(2), 480, subdivision (a), and 10177, subdivision (b), the Department may deny respondent's license application based on her conviction of a crime within the seven years before her application so long as the crime has substantial relationship to the qualifications, functions, or duties of a real estate licensee.

3. Each of the regulations cited below, promulgated by the Real Estate Commissioner pertinent to license applications, is a section of title 10 of the California Code of Regulations.

4. Substantial relationship between a crime and a real estate licensee's qualifications, functions, or duties may be deemed to exist under Regulation 2910 if the crime involved:

Under subdivision (a)(1), fraudulently taking funds belonging to another;

Under subdivision (a)(3), the employment of fraud, deceit, falsehood, or misrepresentation to achieve an end;

Under subdivision (a)(8), doing any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator.

5. Subdivision (c) of Regulation 2910 provides 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.

6. Regulation 2911, subdivision (a), sets out over a dozen criteria to evaluate whether or not an applicant is rehabilitated for purposes of issuing a license. Pertinent considerations under the relevant subdivisions are discussed below.

ANALYSIS

7. For the reasons below, there is substantial relationship between respondent's conviction for welfare fraud and the qualifications, functions, or duties of a licensee.

Substantial Relationship Considerations

8. Considering factors listed in subdivision (c) of Regulation 2910, the gravity of respondent's misconduct derives in part from the large sum, \$14,380, that she was overpaid in welfare benefits. In addition, the misconduct lasted more than two years and, though respondent had opportunities to avoid deception every few months when submitting an application or reapplication or recertification to the RC DPSS, respondent passed up every such opportunity.

9. Respondent was moreover warned in no uncertain terms from the beginning of her communications with the RC DPSS that she had a solemn duty, under penalty of perjury, to disclose all pertinent information regarding her and her household's income fully. She was advised of her continuing duty of disclosure in both face to face meetings with RC DPSS personnel and in documents that spelled all out in simple, non-technical language.

10. Indeed, the RVSD 512B form that respondent completed upon her 2015 application advised her specifically and emphatically how to avoid fraud. As she was advised, respondent had only to tell the RC DPSS of any money from any source anyone in her household received. It was the very type of failure emphasized by the advices to her from the RC DPSS that respondent did not heed and so did not avoid, instead repeatedly committed, deception.

11. The lapse of time since respondent's wrongdoing, the last of it occurring in 2017, more than six years ago, lessens the gravity of her offense in some measure under subdivision (c) of Regulation 2910. But the nature of the offense, fraud or deception in taking money, is closely related to a vital part of a real estate licensee's qualifications, functions, or duties.

12. A licensee is not qualified if the licensee cannot be trusted with others' money. A licensee cannot function well, if at all, if the licensee may stray at any point into fraudulent activity. The real estate profession is concerned with property that is the bedrock of much of society's wealth, including wealth held over the long term and inherited wealth. A licensee's function must support others' wealth and wealth building of these kinds, not subvert or steal them away. So also, a licensee's duties are not fulfilled by a tendency to deceive clients or suppress truth.

13. The considerations under subdivision (c) of Regulation 2910 above inform the following conclusion. Because respondent fraudulently took funds belonging to another or others, in this case funds dedicated to public social services, substantial relationship exists between respondent's crime and a licensee's qualifications, functions, or duties under subdivision (a)(1) of Regulation 2910.

14. The considerations under subdivision (c) of Regulation 2910 above likewise inform the following conclusion. Because respondent employed fraud, deceit, falsehood, or misrepresentation to achieve an end, namely welfare benefits she did not lawfully obtain, substantial relationship exists between respondent's crime and a licensee's qualifications, functions, or duties under subdivision (a)(3) of Regulation 2910.

15. The considerations under subdivision (c) of Regulation 2910 above inform the following conclusion as well. Because respondent did an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator, herself, and upon her household, substantial relationship exists between respondent's crime and a licensee's qualifications, functions, or duties.

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Rehabilitation

16. An encouraging sign of respondent's rehabilitation is her change in attitude. This sort of change is one of the criteria for discerning rehabilitation, as described in subdivision (a)(14) of Regulation 2911. Respondent acknowledged that she did wrong and professed her determination not to repeat wrongdoing.

17. It must be said, however, that respondent at the hearing would not take full responsibility for her failures to disclose income, so that it may be said that her attitude is not changed enough to show full rehabilitation. While respondent laid some blame on herself, she also blamed the heavy workload at the RC DPSS and bureaucracy for mistakes, such as the type of vehicle her husband drove, and for impeding communications about his income.

18. There are indications of rehabilitation under Regulation 2911, subdivision (a)(1). Regarding the regulation's subdivision (a)(1)(A), regarding a two-year period since a respondent's criminal conviction, the two-year period may be increased appropriately in this case under the regulation's subdivision (a)(1)(B)(i) based upon consideration of the nature and severity of respondent's crime, as discussed above regarding substantial relationship. However, given that it has been more than three years since respondent's conviction, enough time has passed, with no repetition of wrongdoing, that respondent's rehabilitation should be considered relatively trustworthy.

19. Under Regulation 2911, subdivision (a)(1)(B)(ii), respondent has no extensive history of criminal convictions, only her 2020 conviction. On balance, the passage of time and short criminal history argue in favor of rehabilitation.

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20. Under Regulation 2911, subdivision (a)(8), rehabilitation is suggested by the stability of respondent's family life and her fulfillment of parental and familial responsibilities.

21. Under Regulation 2911, subdivision (a)(9), another sign of rehabilitation is respondent's pursuit of college studies. She is doing well in her studies, a sign that she takes her self-improvement seriously.

22. Respondent paid back the money she obtained improperly from the RC DPSS. She went into debt to do so. The repayment signals a significant measure of rehabilitation under Regulation 2911, subdivision (a)(10).

23. Respondent presented no evidence of significant involvement in the community, under Regulation 2911, subdivision (a)(12). She pointed out that she is a busy mother of three young children.

24. There are, in summary, many indicators of respondent's rehabilitation. But they do not entirely outweigh certain observations made at the outset, regarding how respondent's change of attitude is not wholehearted. Respondent has certainly made good progress toward reform, even if she has some way to go before the Department may find her rehabilitation entirely trustworthy.

25. In the circumstances, public safety will be adequately protected if respondent is granted a restricted license.

ORDER

The application of respondent, Sonia De Los Angeles Perez, for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson

license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of the Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

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

(b) The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or 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:

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(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 Real Estate 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 license and shall be grounds for the suspension or revocation of that license.

DATE: 02/07/2024

Thomas Lucero

THOMAS LUCERO

Administrative Law Judge

Office of Administrative Hearings