

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of :

MAHSHID ALAMI-RAD,

Applicant/Respondent.

Case No. H-3460 SD

OAH No. L 2006040495

PROPOSED DECISION

Administrative Law Judge Jacqueline Jones, State of California, Office of Administrative Hearings, heard this matter in San Diego, California, on June 1, 2006.

Truly Sughrue, Counsel, represented complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

James W. Peterson, Attorney at Law, represented respondent Mahshid Alami-Rad.

The parties agreed that the record would remain open for ten days pending receipt of two reference letters from respondent's attorney. Respondent's attorney submitted two letters of reference which were received by the Office of Administrative Hearings in San Diego on June 9, 2006. Respondent's attorney also submitted an item designated "exhibit E." Exhibit E is a designated enrollment agreement and notice that Respondents passed the real estate license examination. At no time during the hearing was a request made that the record be left open for Exhibit E. The Department of Real Estate's counsel did not have an opportunity to object to this piece of evidence because it was not brought up by Respondent's counsel. As a result, Exhibit E will not be considered. Upon receipt of the two letters of reference, the record was closed and the matter was submitted on June 9, 2006.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 16, 2006, complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California, signed the Statement of Issues in his official capacity.

The Statement of Issues and other required jurisdictional documents were served on applicant/respondent Mashid Alami-Rad (respondent).

Respondent timely filed a Notice of Defense dated March 26, 2006.

On June 1, 2006, the administrative record was opened. Jurisdictional documents were presented, official notice was taken, sworn testimony and documentary evidence was received, closing arguments were heard, and the matter was submitted on June 9, 2006.

The Application for Licensure

2. On April 8, 2005, respondent applied to the Department for the issuance of a real estate salesperson's license.

3. Question number 25 in the application, requests the disclosure of any criminal convictions.

4. Respondent marked the "YES" box below that question.

5. Question number 27 in the application, requests a detailed explanation of the convictions. It also requests whether the conviction was a misdemeanor or felony at the time of the conviction.

6. Respondent disclosed a misdemeanor conviction. Respondent checked the box indicating misdemeanor conviction. Respondent failed to disclose that the conviction was a felony conviction which was later reduced to a misdemeanor and then expunged. Complainant has not alleged that respondent knowingly made a false statement of material fact that was to be revealed in the application or omitted any material information.

Alami-Rad's Conviction

7. On August 30, 1999, respondent pled guilty to a violation of Penal Code section 550, subdivision (a)(6) (making a fraudulent health benefit claim) in San Diego Superior Court, Case number SCD144620.

Respondent was ordered to pay a fine, required to provide community service of 100 hours and placed on five years of probation. This was a felony conviction. On November 4, 2004, the felony conviction was reduced to a misdemeanor pursuant to a motion by the Respondent.

Circumstances of the Offense

8. Respondent worked as an office manager for her brother, Farzan Alami-Rad. Mr. Farzan Alami-Rad was a dentist. Respondent formed a corporation called MCT. Respondent was the President of the corporation. MCT was a marketing company that

solicited patients from low income neighborhoods for dental work at Farzan Alami-Rad's dental office. MCT corporation billed Medi-Cal for the work. Medi-Cal was defrauded because some of the work was not actually done. The claims submitted to Medi-Cal were not legitimate.

Alami-Rad's Testimony and Other Evidence

9. Respondent was born on September 26, 1960, in Tehran, Iran. Respondent came to America in 1979 on a student visa. Respondent attended Southwestern College, Point Loma College and Grossmont College. Respondent is an American citizen. Respondent has been married for ten years and currently lives in Temecula. Respondent has three children, ages eight, seven, and four. Respondent submitted a reference letter from Jojie Latif which describes respondent as a dedicated individual with wonderful qualities. Respondent submitted a reference letter from her sister, Mahvash Alami-Rad. The letter describes the respondent as a helpful, compassionate and supportive sister. Respondent submitted a reference letter from her husband Seyed Tateri. Mr. Tateri describes respondent as a wonderful wife and a great mother.

10. In 1993 or 1994, respondent began working as a receptionist at Farzan Alami-Rad's dental office. Respondent eventually took over more and more duties and eventually became an office manager for her brother's North Park dental office.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. See, *California Administrative Hearing Practice* (Second Edition), "The Hearing Process," sections 7.51-7.53, pp. 365-367, and the cases cited therein.

Applicable Statutes

2. Business and Professions Code section 480 provides in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made. . ."

3. Business and Professions Code section 10177 provides in pertinent part:

“The commissioner . . . may deny the issuance of a license to an applicant, who has done any of the following. . .

- (b) Entered a plea of guilty or nolo contendere to, or been found guilty of,
- (c) or been convicted of, a felony or a crime involving moral turpitude. . . .”

Substantial Relationship/Moral Turpitude

4. Conviction alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question. (*Harrington v. Department of Real Estate* (1989) 214 Cal. App.3d 394, 402.)

5. The Department of Real Estate enacted California Code of Regulations, title 10, section 2910, which contains substantial relationship criteria. Subdivision (a)(8) provides that the 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 is substantially related to the qualifications, functions and duties of a real estate licensee.

6. Criminal acts of dishonesty committed for financial gain necessarily involve turpitude. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.) Medi-Cal fraud is such a crime. The Respondent's corporation billed for services that were never done.

7. In 1999, respondent was convicted of making a fraudulent health benefit claim. This conviction happened about seven years ago. Under the Department's regulations respondent's conviction is substantially and adversely related to the qualifications, functions and duties of a licensed real estate salesperson.

8. The following matters appear with regard to the Department's criteria of rehabilitation. California Code of Regulations, title 10, section 2911 provides relevant criteria of rehabilitation. Almost seven years have passed since the conviction. Expungement of the criminal conviction occurred on November 4, 2004. Probation was completed. Payment of a fine was made. Respondent has been married for ten years and has three children. Respondent's family life appears to be stable, although her husband does have some medical issues.

9. Respondent has the burden to establish her qualifications and fitness to hold a real estate license. Because of her conviction she had to establish rehabilitation. Alami-Rad did not present any evidence of involvement in the community. Respondent's entire focus appeared to be on her children. There was no testimony regarding remorse or a change in attitude. Applicant in fact testified that she didn't do anything wrong. Applicant testified that what she did wrong was trust her brother. Alami-Rad testified that she was guilty because she let MTC operate under her name. Respondent did not indicate why defrauding

Medi-Cal was wrong. Alami-Rad profited from the illegal Medi-Cal scheme but did not express any remorse. Respondent has not learned anything from the conviction. As a result, rehabilitation has not been fully completed and precludes a real estate salesperson license from being granted on this application.

Cause Exists to Deny the Application

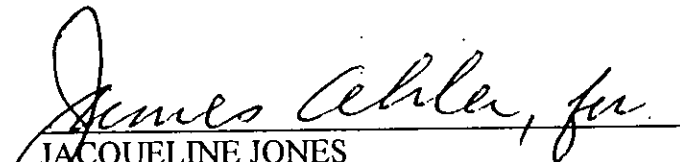
10. Cause exists to deny Respondent's application for a real estate salesperson's license under Business and Professions Code section 10177, subdivision (b). Respondent was convicted of Medi-Cal fraud, a crime involving moral turpitude. Cause to deny also exists under Business and Professions Code section 480, subdivision (a). The crime committed is substantially related to the qualifications, functions and duties of a real estate agent. Respondent failed to establish sufficient rehabilitation from this offense to warrant granting her a real estate salesperson's license at this time, even on a restricted basis.

This conclusion is based on Factual Findings 2-10 and Legal Conclusions 1-10.

ORDER

The application for a Real Estate Salesperson License filed by Mahshid Alami-Rad with the Department of Real Estate on April 8, 2005, is denied.

DATED: 6/22/06


JACQUELINE JONES
Administrative Law Judge
Office of Administrative Hearings

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FILED
MAR 20 2006

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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|---------------------------------------|----------------------------|
| In the Matter of the Application of) | No. H-3460 SD |
| MAHSHID ALAMI-RAD,) | <u>STATEMENT OF ISSUES</u> |
| Respondent.) | |

The Complainant, J. CHRIS GRAVES, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against MAHSHID ALAMI-RAD (hereinafter "Respondent"), is informed and alleges as follows:

I

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about April 8, 2005, with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Section 10153.4 of the Business and Professions Code.

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II

Complainant, J. CHRIS GRAVES, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

On or about August 30, 1999, in the Superior Court, County of San Diego, Respondent was convicted of a violation of Section 550(a)(6) of the California Penal Code (Making Fraudulent Health Benefit Claim), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, as alleged above, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, and for such other and further relief as may be proper under other provisions of law.

J. Chris Graves

J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 16th day of March, 2006.