

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

CLAUDETTE MARIE MEDEIROS,

Respondent.

CASE No. H-3705 SAC

OAH No. N2002090238

PROPOSED DECISION

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on November 4, 2002.

Deidre L. Johnson, Staff Counsel, Department of Real Estate, State of California, represented Complainant.

Respondent Claudette Marie Medeiros (“respondent”) appeared and was represented by Sean J. Geddes, Esq.

Evidence was received and the matter submitted on November 4, 2002.

FACTUAL FINDINGS

1. On July 26, 2002, Charles W. Koenig, Deputy Real Estate Commissioner, Department of Real Estate (“Department”), State of California, filed the Statement of Issues against respondent in his official capacity.

2. On August 29, 2001, respondent executed and subsequently submitted to the Department a Salesperson License Application. Said application for licensure is pending.

3. Question 25 of Respondent’s application for licensure asks, “Have you ever been convicted of any violation of law?” Respondent answered, “Yes” and, with the assistance of a court clerk, thereupon listed several convictions (Findings 4, 6 and 7) suffered by her.

4. On July 5, 1995, in a matter before the Municipal Court of California, County of San Joaquin, Tracy Judicial District, entitled *People vs. Claudette Marie Snelling*, Case No. TM19020, respondent, 36, was convicted of violating Penal Code §148 [Interfering with a Peace Officer], a misdemeanor. Respondent was sentenced to a three-year term of probation and ordered, with respect to an unrelated matter entitled *People vs. Claudette Marie Snelling*, Case No. TM19084, alleging a violation of Penal Code §666 [Petty Theft with a Prior], a misdemeanor dismissed upon a plea to the Penal Code §148 violation, to effect restitution.

5. The facts and circumstances underlying the conviction set forth in Finding 4 are that respondent, on June 5, 1995, interfered with a civil effort by law enforcement to restore custody of respondent's son to her mother.

6. On April 19, 1995, in a matter before the Municipal Court of California, County of San Joaquin, Tracy Judicial District, entitled *People vs. Claudette Marie Snelling*, Case No. TM18251, respondent, 36, was convicted of violating Penal Code §415 [Disturbing the Peace], an infraction. Respondent was fined \$300 and given credit for time served.

7. On March 8, 1995, in a matter before the Superior Court of California, County of San Joaquin, entitled *People vs. Claudette Marie Snelling*, Case No. TM18305, respondent, 36, was convicted of violating Penal Code §484 [Petty Theft], a misdemeanor and crime of moral turpitude substantially related to the qualifications, functions or duties of a real estate salesperson. Respondent was placed on probation for three years and ordered to serve 20 days in the county jail.

A. On May 15, 1995, respondent's probation was summarily revoked for her failure to report to jail on her 20-day sentence. A bench warrant issued. On May 30, 1995, respondent, in custody, appeared and admitted the violation of probation. Her probation was reinstated and modified to include an additional 10 days in the county jail.

B. On July 26, 1995, respondent's probation was summarily revoked for her failure to report to jail on her 30-day sentence. A bench warrant issued. On August 21, 1995, respondent, in custody, appeared and admitted the violation of probation. Her probation was reinstated and modified to include an additional 15 days in the county jail.

8. The facts and circumstances underlying the conviction set forth in Finding 7 are that on January 7, 1995, respondent, indigent, stole a toothbrush for her son from a supermarket.

9. On March 26, 1986, in a matter before the Municipal Court of California, County of San Joaquin, Tracy Judicial District, entitled *People vs. Claudette Marie Snelling*, respondent, 27, was convicted of violating Penal Code §484 [Petty Theft], a misdemeanor and crime of moral turpitude substantially related to the qualifications, functions or duties of a real estate salesperson. Respondent was placed on summary probation.

10. The facts and circumstances underlying the conviction set forth in Finding 9 are that respondent, on January 22, 1986, left a Long's Drug Store with earrings without having paid for the items.

11. Respondent candidly and cogently indicates placing particular attention to properly completing her application. She admits having been denied a vehicle salesperson's license¹ from the Department of Motor Vehicles ("DMV") and sought to avoid another denial by personally going to both the local police department to ascertain her arrests and, subsequently, to the courthouse to ascertain her extant criminal history. Having been advised of her 1995 arrests and convictions, she dutifully reported her violations. While she was vaguely aware of her 1986 conviction, she believed it had been purged and, no longer an extant record nor one raised in her prior DMV proceeding, did not report the conviction. What emerges is an applicant who lacked any intent to deceive the Department in the completion or submission of her application and who exercised particular due diligence in properly completing the application.

Circumstances in Mitigation

12. Respondent, 44, as a consequence of these proceedings, has garnered some insight into the scope of her obligations to the Department.

13. Respondent relates that in 1995 she was undergoing severe domestic and fiscal difficulties that led to her lapses in judgment and criminal convictions.² Since that period of time, she has remarried and refocused her life, attending church and participating as a CCD instructor, and suffered no further violations of law.

14. Respondent, licensed as a cosmetologist since 1978,³ seeks Department licensure to elevate her career aspirations and income as a real estate salesperson.

15. Respondent's multiple grants of probation have successfully terminated.

Circumstances in Aggravation

16. Respondent has suffered multiple convictions of crimes of moral turpitude.

17. Respondent has engaged in multiple acts of moral turpitude.

18. Respondent's last grants of probation terminated less than five years ago with no evidence of Penal Code §1203.4 relief.

¹ Respondent's husband is a vehicle dealer sales manager.

² Without submitting wholly to the argument posed by respondent's counsel that would otherwise redefine the scope of moral turpitude as it relates to theft, it is substantially demonstrated that respondent's commission of the 1995 theft was mitigated in that it provided for necessities of life.

³ It does not appear that the Bureau of Barbering and Cosmetology undertook disciplinary action against respondent's license for the convictions set forth herein. See Business and Professions Code §7404.

19. Respondent's testimony relating to her moral character, supported by a single friend, lacked other and broader independent corroboration (particularly from colleagues or employers).

LEGAL CONCLUSIONS

1. Cause exists to deny the application of respondent for licensure as a real estate salesperson for criminal convictions substantially related to the qualifications, functions or duties of a real estate salesperson pursuant to the provisions of Business and Professions Code §§480(a) and 10177(b), in conjunction with Title 10, California Code of Regulations, §2910, and as set forth in Findings 6 through 10.

2. Cause does not exist to deny the application of respondent for licensure as a real estate salesperson for material misstatement of fact in an application pursuant to the provisions of Business and Professions Code §§480(c) and 10177(a), and as set forth in Findings 2 through 11.

3. The objective of a disciplinary proceeding is to protect the public, the licensed occupation, maintain integrity, high standards, and preserve public confidence in Department licensure.⁴ The statutes relating to Department licensure are designed to protect the public from any potential risk of harm.⁵

The law looks with favor upon those who have been properly reformed.⁶ To that end, respondent bears a burden against multiple acts of moral turpitude (however mitigating) to establish her reformation. Respondent has not done so. While it is established that respondent has undergone particular life challenges and changes, her lapse of judgment, repeated failures of probation, and the history (1986 through 1995) of crimes of moral turpitude compel this court's particular scrutiny. Accordingly, giving due consideration to the facts and circumstances underlying the Statement of Issues (Legal Conclusion 1) and the circumstances in mitigation (Findings 12 through 15) and aggravation (Findings 16 through 19), this court concludes that the public interest will be harmed by the issuance, at this time,⁷ of a real estate salesperson's license to respondent.

⁴ Cf. *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

⁵ See *Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.

⁶ See *Resner v. State Bar* (1967) 67 Cal.2d 799, 811.

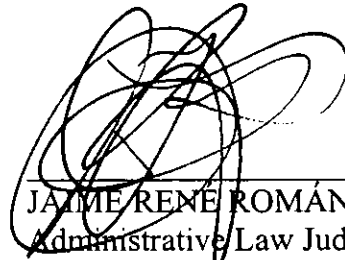
⁷ Although the instant Legal Conclusions and Order are adverse to respondent, she should not lose heart. Rather, she should continue with her reformation and, upon garnering sufficient evidence of rehabilitation, including letters of reference and Penal Code §1203.4 relief, reconsider applying for licensure.

ORDER

The application of Respondent Claudette Marie Medeiros for licensure as a real estate salesperson by the Department of Real Estate is denied.

Dated:

11/26/02



JAI ME RENE ROMÁN
Administrative Law Judge
Office of Administrative Hearings

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

FILED
OCT - 8 2002

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

In the Matter of the Application of

CLAUDETTE MARIE MEDEIROS,

} Case No. H-3705 SAC

} OAH No. N-2002090238

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at

**THE OFFICE OF ADMINISTRATIVE HEARINGS
560 J STREET, SUITES 340/360
SACRAMENTO, CALIFORNIA 95814**

on **NOVEMBER 4, 2002**, at the hour of **10:30 AM**, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: OCTOBER 4, 2002

By *Deidre L. Johnson*
DEIDRE L. JOHNSON, Counsel

RE 500 (Rev. 8/97)

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6
7 Telephone: (916) 227-0789

FILED
AUG - 9 2002

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12) NO. H-3705 SAC
13 CLAUDETTE MARIE MEDEIROS,)
14) STATEMENT OF ISSUES
Respondent.)

15 The Complainant, CHARLES W. KOENIG, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Statement of Issues against CLAUDETTE MARIE MEDEIROS, alleges as
18 follows:

19 I

20 CLAUDETTE MARIE MEDEIROS (hereafter Respondent),
21 pursuant to the provisions of Section 10153.3 of the Business
22 and Professions Code, made application to the Department of Real
23 Estate of the State of California (hereafter the Department) for
24 a real estate salesperson license on or about September 13, 2001,
25 with the knowledge and understanding that any license issued as
26 a result of said application would be subject to the conditions
27 of Section 10153.4 of the Business and Professions Code.

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II

Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

In response to Question 25 of said application, to wit: "Have you ever been convicted of any violation of law?", Respondent answered "Yes," and disclosed the convictions alleged in Paragraphs V and VI below. Respondent failed to disclose the conviction alleged in Paragraph IV below.

IV

On or about March 26, 1986, in the Municipal Court of the State of California, County of San Joaquin, Respondent was convicted of a violation of California Penal Code Section 484 (PETTY THEFT), a crime involving moral turpitude, and/or a crime 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.

V

On or about March 8, 1995, in the Municipal Court of the State of California, County of San Joaquin, Respondent was convicted of a violation of California Penal Code Section 484(a) (PETTY THEFT), a crime involving moral turpitude, and/or a crime 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.

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VI

On or about July 5, 1995, in the Municipal Court of the State of California, County of San Joaquin, Respondent was convicted of a violation of California Penal Code Section 148 (RESISTING, DELAYING, OR OBSTRUCTING PUBLIC OFFICER), a crime involving moral turpitude, and/or a crime 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.

VII

The crimes of which Respondent was convicted as alleged in Paragraphs IV, V, and VI above constitute cause, jointly and severally, 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.

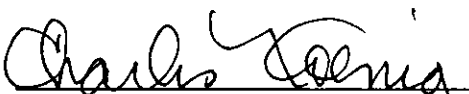
VIII

Respondent's failure in said application to reveal the conviction set forth in Paragraph IV above constitutes the attempt to procure a real estate license by fraud, misrepresentation, or deceit, and/or by making a material misstatement of fact, and/or by knowingly making a false statement of fact in said application, which is cause for denial of Respondent's application for a real estate license under Sections 480(c) and 10177(a) of the Business and Professions Code.

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1 WHEREFORE, the Complainant prays that the above-entitled
2 matter be set for hearing and, upon proof of the charges
3 contained herein, that the Commissioner refuse to authorize the
4 issuance of, and deny the issuance of a real estate salesperson
5 license to Respondent, and for such other and further relief as
6 may be proper in the premises.

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CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 20th day of July, 2002.