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FILED
JUN 14 2002
DEPARTMENT OF REAL ESTATE
By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of) NO. H-29267 LA
CAMEO YVETTE KNEUER,)
Respondent.) L-2001110302

DECISION AFTER REJECTION

The above-entitled matter came on for hearing before Paul Hogan, Administrative Law Judge, of the Office of Administrative Hearings, at Los Angeles, California, on December 13, 2001.

Complainant was represented by James R. Peel, Counsel. Respondent CAMEO YVETTE KNEUER, was present at the hearing and represented herself.

Evidence was received and the matter stood submitted on December 13, 2001.

///

1 On January 8, 2002, the Administrative Law Judge
2 submitted a Proposed Decision which I declined to adopt as the
3 Decision of the Real Estate Commissioner. Pursuant to Section
4 11517.(c) of the Government Code of the State of California,
5 Respondent was served with a copy of the Proposed Decision dated
6 January 8, 2002, and with notice that the case would be decided
7 by me upon the record including the transcript of proceedings
8 held on December 13, 2001, and upon any written argument offered
9 by the parties.

10 Argument has been submitted on behalf of the parties.

11 I have given careful consideration to the record in
12 this case, including the transcript of proceedings of
13 December 13, 2001.

14 The following shall constitute the Decision of the Real
15 Estate Commissioner in this matter.

16 FINDINGS OF FACT

17 1. Thomas McCrady, Complainant, is a Deputy Real
18 Estate Commissioner of the State of California and made the
19 Statement of Issues in his official capacity.
20

21 2. On or about August 23, 2001, Respondent applied to
22 the Department of Real Estate of the State of California for a
23 real estate salesperson license. Complainant subsequently filed
24 a Statement of Issues in opposition to such application, raising
25 the questions of prior conviction of Respondent, and her failure
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1 to disclose it on her application as bases of denial. Respondent
2 has filed a Notice of Defense, and these proceedings ensued.

3 The parties have otherwise timely filed and served all
4 pleadings, notices and other papers as required by law.

5 3. On January 15, 1991, a complaint against Respondent
6 was filed in the Municipal Court of the West Los Angeles Judicial
7 District charging her with misdemeanor theft of property in
8 violation of Section 484(A) of the Penal Code. On February 7,
9 1991, Respondent was present in court, and pleaded no contest to
10 an amended charge of trespass in violation of Section 602(J) of
11 the Penal Code, and the theft charge was dismissed. The court
12 accepted the plea, found the Respondent guilty and placed her on
13 summary probation for one year on condition she pay fines and
14 assessments totaling \$164.50. Respondent complied with her
15 probation, the term expired, and her lawyer obtained Section
16 1203.4 relief for her, wherein the plea reverted to "not guilty",
17 the conviction was set aside, and the case dismissed. She served
18 no time in jail.

19
20 4. At the administrative hearing, Respondent testified
21 to the following: Two days before Christmas in 1990, then 29
22 years of age, in the company of her infant son, Respondent was
23 trying to buy a specific pair of men's sport shoes described by
24 her husband. The store was crowded with customers, her son was
25 acting up, and the sales force on the floor had numerous open
26 shoeboxes lying around while they tried to fulfill their
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1 customers' wishes. Respondent's selection was placed in the
2 wrong box, and she was undercharged by the sales clerk who
3 scanned the box which bore a lower price tag. She was arrested
4 by the sales clerk, who followed her as she made her way to the
5 exit, who then and there took her in custody.

6 5. Respondent further testified that she was advised
7 by her attorney that the plea to the trespassing charge would not
8 constitute a conviction and that the case would not be on her
9 records. She also testified that her attorney told her that the
10 case was set aside, a plea of not guilty entered and the case was
11 dismissed. Such advice may have been misleading. However, the
12 Court records state that Respondent was present in court during
13 the arraignment on February 7, 1991. During the arraignment, the
14 Court amended the Complaint to add a violation of 602(j) of the
15 Penal Code as Count 2 and the Court records states that
16 Respondent was advised extensively regarding her rights,
17 including the possible consequences of a plea of guilty or nolo
18 contendere. Thereafter, the Court record states that Respondent
19 pleaded no contest to the amended charge of trespass and the
20 Court thereafter found the Respondent guilty and accepted the
21 plea.
22

23 Given the Court record, it is not reasonable to believe
24 that Respondent did not know that she had been convicted of a
25 violation of law, or that at the very least she had entered a
26 plea of nolo contendere to a violation of law.
27

1 6. The Department's license application clearly states
2 that a plea of nolo contendere constitutes a "conviction".

3 In addition, the license application requires that all
4 convictions be disclosed, even if the matter has been dismissed
5 or expunged. Question 25 of the Application asks:

6 Have you ever been convicted of any violation of law?
7 (You may omit convictions for drunk driving, reckless
8 driving, and minor traffic citations which do not
9 constitute a misdemeanor or felony offense.)

10 Question 25 is preceded by a bold caution which recites:

11 * **Carefully read and provide detailed answers to**
12 **questions #24-26.** You must provide a yes or no response
13 to all questions. * 'Convicted' as used in Question 25
14 includes a verdict of guilty by judge or jury, a plea of
15 guilty or of nolo contendere, or a forfeiture of bail in
16 municipal, superior or federal court. All convictions
17 must be disclosed whether or not the plea or verdict was
18 set aside, the conviction against you was dismissed, or
19 expunged or if you have been pardoned. Convictions
20 occurring while you were a minor must be disclosed unless
21 the record of conviction has been sealed under Section
22 1203.45 of the California Penal Code or Section 781 of the
23 California Welfare and Institutions Code.

24 Respondent testified at the administrative hearing that
25 she didn't read the entire box and that she stopped reading at
26 the words "by judge or jury". This testimony by Respondent is
27 problematic because Respondent signed the application under
penalty of perjury that her answers and statements given in the
application were true and correct. The fact that Respondent
would sign such a statement without reading all the questions
reflects negatively on her honesty and integrity as well as her

1 licensure. A real estate license handles a lot of transactional
2 paperwork that has a significant impact on the people involved.
3 Such paperwork cannot be handled carelessly.

4 In addition, it is questionable that Respondent stopped
5 reading the paragraph just prior to the statement that a plea of
6 guilty or nolo contendere must be revealed.

7 7. It appears that Respondent's representation on her
8 license application under penalty of perjury, that she had not
9 ever been convicted of a violation of law was dishonest and
10 apparently an effort at deception. At a minimum, given the
11 information Respondent said she received from her attorney which
12 conflicts with the question on the license application,
13 Respondent should have made further inquiry with the court
14 regarding the fact of her conviction, and further inquiry with
15 the Department of Real Estate regarding the requirement to report
16 all criminal matters, prior to signing and submitting her
17 application under penalty of perjury.
18

19 It is evident that Respondent failed to appreciate the
20 need to provide such information. Case law has determined that
21 this negatively reflects on the honesty and integrity of an
22 applicant. In Re Gossage (2000) 23 Cal. 4th 1080. "...Whether
23 it is caused by intentional concealment, reckless disregard for
24 the truth, or an unreasonable refusal to perceive the need for
25 disclosure, such an omission is itself strong evidence that the
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1 applicant lacks the "integrity" and/or "intellectual discernment"
2 required to be an attorney..." In Re Gossage, supra, at p. 1102.

3 8. In addition, to the crime itself and Respondent's
4 failure to disclose on her license application, there is another
5 factor which negatively reflects on Respondent's honesty and
6 integrity. At the administrative hearing, Respondent testified
7 in reference to her conviction that she had never had anything
8 like this happen in her life, before or after; she hasn't even
9 had a speeding ticket; and that she did not remember ever going
10 to court with her attorney or at any time. As discussed in
11 Paragraph 5, given the fact that the Court record states that
12 Respondent was present at the arraignment, and was extensively
13 advised by the Court before she entered a plea, it is not
14 reasonable to believe that she does not ever remember going to
15 court. This is true especially in light of her testimony that
16 she has never even had a speeding ticket.

17
18 DETERMINATION OF ISSUES

19 1. Cause for denial of Respondent's application exists
20 pursuant to Sections 475(a)(1), 480(c) and 10177(a) of the
21 Business and Professions Code.

22 2. Cause for denial of Respondent's application exists
23 pursuant to Sections 480(a) and 10177(b) of the Business and
24 Professions Code. Considering the circumstances surrounding the
25 arrest and conviction of Respondent, it appears reasonable to
26 conclude that the crime is substantially related to the duties,
27

1 functions, and responsibilities, of a real estate licensee. We
2 only have Respondent's version of the incident which led to the
3 conviction. However, it is not reasonable to conclude that she
4 would have been arrested for only placing the shoes in the wrong
5 box.

6 3. Respondent's application was signed under
7 penalty of perjury, and materially misstated important facts. In
8 addition, the questionable explanations Respondent has given for
9 her failure to disclose her conviction on her license
10 application, and the questionable statement by Respondent that
11 she never remembers being in court, all reflect negatively on
12 Respondent's honesty and integrity.

13 In Norman I. Krug Real Estate Investments, Inc. v.
14 Praszker, (1994) 22 Cal. App. 4th 1814, 1821, it was noted that
15 one of the purposes of the Real Estate Law "...is to insure, as far
16 as possible, that real estate licensees will be honest and
17 truthful in their dealings with members of the public." (State
18 of California v. Superior Court (1984) 150 Cal. App. 3d, 848,
19 856, citing Brown V. Gordon (1966) 240 Cal. App. 2nd 659, 667;
20 Buckley v. Savage (1960) 184 Cal. App. 2d 18, 31-32.
21

22 The Legislature intended to ensure that real estate
23 brokers and salespersons will be honest, truthful and worthy of
24 the fiduciary responsibilities which they will bear. (Ring v.
25 Smith (1970) 5 Cal.App.3rd 197, 205, Golde v Fox 98 Cal.App.3d at
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177.). Harrington v. Department of Real Estate (1989) 214
1 Cal.App.3d at 402.
2

3 In addition, Respondent's lack of candor in completing
4 her license application is sufficient to sustain a finding that
5 Respondent does not now appreciate the need to speak honestly
6 about and to accept responsibility for her actions. Harrington,
7 at 406.

8 It would not be against the public interest if
9 Respondent were issued a properly restricted real estate
10 salesperson license.

11 ORDER

12 Respondent's application for a real estate salesperson
13 license is denied; provided, however, a restricted real estate
14 salesperson license shall be issued to Respondent pursuant to
15 Section 10156.5 of the California Business and Professions Code
16 and to the following limitations, conditions and restrictions
17 imposed under authority of Section 10156.6 of said Code:
18

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

- 24 (a) The conviction of Respondent (including a plea
25 of nolo contendere) of a crime which is
26 substantially related to Respondent's
27

1 fitness or capacity as a real estate
2 licensee; or

3 (b) The receipt of evidence that Respondent has
4 violated provisions of the California Real
5 Estate Law, the Subdivided Lands Law,
6 Regulations of the Real Estate Commissioner
7 or conditions attaching to this restricted
8 license.

9 2. Respondent shall not be eligible to apply for the
10 issuance of an unrestricted real estate license nor
11 the removal of any of the conditions, limitations
12 or restrictions attaching to the restricted license
13 until two years have elapsed from the date of
14 issuance of the restricted license to Respondent.

15 3. With the application for license, or with the
16 application for transfer to a new employing broker,
17 Respondent shall submit a statement signed by the
18 prospective employing real estate broker on a form
19 RE 552 (Rev. 4/88) approved by the Department of
20 Real Estate which shall certify as follows:

21 (a) That the employing broker has read the
22 Decision which is the basis for the
23 issuance of the restricted license; and
24

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1 (b) That the employing broker will carefully
2 review all transaction documents prepared
3 by the restricted licensee and otherwise
4 exercise close supervision over the
5 licensee's performance of acts for which
6 a license is required.

7 4. Respondent's restricted real estate salesperson
8 license is issued subject to the requirements of
9 Section 10153.4 of the Business and Professions
10 Code, to wit: Respondent shall, within eighteen
11 (18) months of the issuance of the restricted
12 license, submit evidence satisfactory to the
13 Commissioner of successful completion, at an
14 accredited institution, of two of the courses
15 listed in Section 10153.2, other than real estate
16 principles, advanced legal aspects of real estate,
17 advanced real estate finance or advanced real
18 estate appraisal. If Respondent fails to timely
19 present to the Department satisfactory evidence of
20 successful completion of the two required courses,
21 the restricted license shall be automatically
22 suspended effective eighteen (18) months after the
23 date of its issuance. Said suspension shall not be
24 lifted unless, prior to the expiration of the
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restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

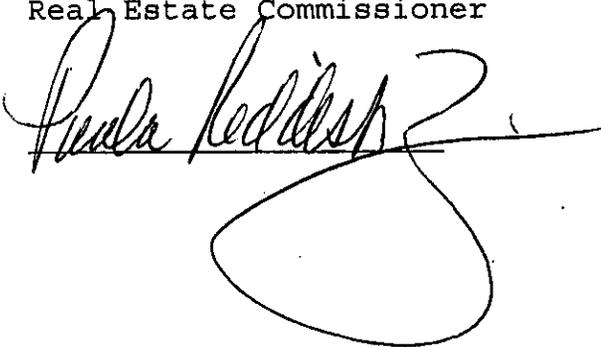
5. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

This Decision shall become effective at 12 o'clock noon
on July 5, 2002.

IT IS SO ORDERED

June 13, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



*Suits
2/2/02*

FILED
FEB 7 2002
DEPARTMENT OF REAL ESTATE

James S. Gunn

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	No. H-29267 LA
CAMEO YVETTE KNEUER,)	L-2001110302
)	
Respondent.)	
)	
)	

NOTICE

TO: CAMEO YVETTE KNEUER, Respondent

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 8, 2002, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 8, 2002, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on December 13,

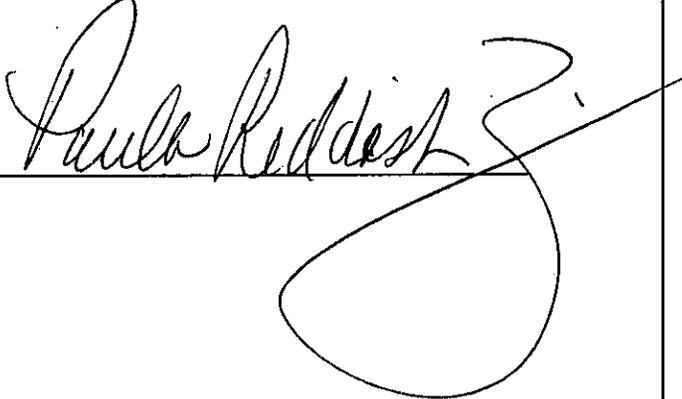
1 2001, and any written argument hereafter submitted on behalf of
2 respondent and complainant.

3 Written argument of respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of December 13, 2001, at the Los Angeles
6 office of the Department of Real Estate unless an extension of
7 the time is granted for good cause shown.

8 Written argument of complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 respondent at the Los Angeles Office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: January 17, 2002.

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15 PAULA REDDISH ZINNEMANN
Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of:)	No. H-29267 LA
)	
CAMEO YVETTE KNEUER,)	OAH No. L-2001110302
)	
Respondent.)	
)	
)	

PROPOSED DECISION

This case was tried before Paul M. Hogan, Administrative Law Judge of the Office of Administrative Hearings, on December 13, 2001, at Los Angeles, California

James R. Peel, counsel, represented complainant. Cameo Yvette Kneuer, respondent, appeared personally without counsel.

The parties presented oral and documentary evidence, and submitted the matter for decision. The Administrative Law Judge proposes:

Findings of Fact

1. Complainant, Thomas McCrady, is a Deputy Real Estate Commissioner, and caused the Statement of Issues to be served and filed herein while acting solely in his official capacity.
2. On or about August 23, 2001, respondent applied to the Department of Real Estate for a real estate salesperson license.
3. Complainant subsequently filed a Statement of Issues in opposition to such application, raising the questions of prior conviction of respondent, and her failure to disclose it on her application as bases of denial. Respondent has filed a Notice of Defense, and these proceeding ensued. The parties have otherwise timely filed and served all pleadings, notices and other papers as required by law.

4. On January 15, 1991, a complaint against respondent was filed in the Municipal Court of the West Los Angeles Judicial District charging her with misdemeanor theft of property in violation of Section 484(A) of the Penal Code. On February 7, 1991, respondent was present in court, and pleaded no contest to an amended charge of trespass in violation of Section 602(J) of the Penal Code, and the theft charge was dismissed. The court accepted the plea, found the respondent guilty and placed her on summary probation for one year on condition she pay fines and assessments totaling \$164.50. Respondent complied with her probation, the term expired, and her lawyer obtained Section 1203.4 relief for her, wherein the plea reverted to "not guilty", the conviction was set aside, and the case dismissed. She served no time in jail.

5. Respondent, two days before Christmas in 1990, then 29 years of age, in the company of her infant son, was trying to buy a specific pair of men' sport shoes described by her husband. The store was crowded with customers, her son was acting up, and the sales force on the floor had numerous open shoeboxes lying around while they tried to fulfil their customers' wishes. Respondent's selection was placed in the wrong box, and she was undercharged by the sales clerk who scanned the box which bore a lower price tag. She was arrested by the sales clerk, who followed her as she made her way to the exit, who then and there took her in custody.

6. Respondent was advised by her attorney that the plea to the trespassing charge would not constitute a conviction, and that the case would not be on her records. This advice, while somewhat misleading, is not without foundation. It is questionable whether the trespass offense inherently involves moral turpitude. And one who has Penal Code section 1203.4 relief can safely represent to the world they have no record, except if applying for a business or professional license issued by the State of California.

7. There is no evidence that respondent had any direct involvement in the procedure to obtain section 1203.4 Penal Code relief. Thus, it cannot be said that she had any knowledge of the limitations of such relief, or indeed, even what such relief is called in common parlance. Lacking such evidence, it cannot be found that she harbored any intent to mislead the licensing agency by suppressing any information.

8. In view of the over ten-year lapse of time since the facts constituting the offense occurred, and in view of the circumstances of respondent's arrest, it cannot be concluded that there is any substantial relationship, either in law or in fact, between her misadventure in the shoe store and the occupation for which she seeks a license.

9. Likewise, it is concluded there is insufficient evidence upon which to base a finding that respondent intended to procure a real estate salesperson license by either

misrepresentation, fraud or deceit, or by the making of a material misstatement of fact in her application.

10. Respondent was clearly embarrassed by this incident. She is an extremely successful businesswoman with an excellent reputation. Her testimony at the hearing was rational and consistent, and her demeanor forthcoming. Her relation of the circumstances of her conviction is entirely credible.

Conclusions of Law

By reason of the facts set forth in Findings 6 and 7, no cause for denial of respondent's application exists pursuant to sections 475(a)(1), 480(c) or 10177(a) of the Business and Professions Code.

By reason of the facts set forth in Finding 8, no cause for denial of respondent's application exists pursuant to sections 480(a) and 10177(b) of the Business and Professions Code.

Order

The Statement of Issues is overruled. If respondent is otherwise qualified for licensure, her application is granted, and the license applied for shall issue in the normal course of business.

January 8, 2002


PAUL M. HOGAN
Administrative Law Judge
Office of Administrative Hearings

NOT RECORDED

Sacto

FILED
NOV 29 2001
DEPARTMENT OF REAL ESTATE

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

By *Jana B. Cron*

In the Matter of the Application of) Case No. H-29267 LA
) L-2001110302
CAMEO YVETTE KNEUER,)
)
Respondent(s))

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 Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on **DECEMBER 13, 2001** at the hour of **9:00 a.m.**, 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 are 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 for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: November 29, 2001

DEPARTMENT OF REAL ESTATE

By: *James R. Peel*
for JAMES R. PEEL, Counsel

cc: Cameo Yvette Kneuer
Sacto.
OAH

RE 500 JRP:lbo

Sacto Star

FILED
OCT 24 2001
DEPARTMENT OF REAL ESTATE

By Laura B. [Signature]

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, CA 90013-1105
5
6
7
8 Telephone: (213) 576-6982
9 -or- (213) 576-6913 (Direct)

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11	In the Matter of the Application of)	No. H-29267 LA
12	CAMEO YVETTE KNEUER,)	<u>STATEMENT OF ISSUES</u>
13	Respondent.)	

15 The Complainant, Thomas McCrady, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against CAMEO YVETTE KNEUER (Respondent) is informed and alleges
18 in his official capacity as follows:

I

20 On or about August 23, 2001, Respondent applied to the
21 Department of Real Estate of the State of California for a real
22 estate salesperson license.

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II

In response to Question 25 of said application, to wit, "Have you ever been convicted of any violation of law?...", Respondent answered "No" and failed to disclose the conviction set forth in Paragraph III.

III

On or about February 7, 1991, in the Municipal Court for the County of Los Angeles, State of California, Respondent was convicted of violating Penal Code Section 602(J) (Tresspass), a crime involving moral turpitude and substantially related to the qualifications, functions or duties of a real estate licensee, in that Respondent shoplifted merchandise from Sportsmart.

IV

The matter described in Paragraph III constitutes cause for denial of Respondent's application for a real estate salesperson license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

V

Respondent's failure to disclose the conviction set forth in Paragraph III, above, in said application, constitutes the attempted procurement of a real estate salesperson license by misrepresentation, fraud, or deceit, or by making a material misstatement of fact in said application which is cause to deny Respondent's real estate license application under Sections 475(a)(1), 480(c) and 10177(a) of the California Business and Professions Code.

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The Statement of Issues is brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11528 of the Government 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 CAMEO YVETTE KNEUER, and for such other and further relief as may be proper in the premises.

Dated at Los Angeles, California
this 24th day of October, 2001.


Deputy Real Estate Commissioner

cc: Cameo Yvette Kneuer
Thomas McCrady
Sacto
EME