

BEFORE THE BUREAU OF REAL ESTATE

FILED

STATE OF CALIFORNIA

JUL 27 2016

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BUREAU OF REAL ESTATE

By *Cal Delouis*

In the Matter of the Accusation of)	CalBRE No. H-40088 LA
)	
KIRA LYN LIMONGELLI,)	OAH No. 2016020845
)	
Respondent.)	

DECISION

The Proposed Decision dated June 22, 2016, 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 Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau'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.

This Decision shall become effective at 12 o'clock noon on AUG 16 2016.

IT IS SO ORDERED 7/22/2016

REAL ESTATE COMMISSIONER

Wayne Bell
WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

KIRA LYN LIMONGELLI,

Respondent.

Case No. H-40088 LA

OAH No. 2016020845

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on May 17, 2016, in Los Angeles, California.

Complainant was represented by James Peel, Counsel for the Bureau of Real Estate (Bureau). Kira Lyn Limongelli (respondent) appeared personally and represented herself.

Evidence was received and the record was left open to allow respondent to submit documentation of her participation in Alcoholics Anonymous (AA). The documentation was received on May 19, 2016, and marked and admitted as Exhibit B. Respondent also submitted a reference letter, which was marked and admitted as Exhibit C. Complainant did not submit a reply. The record was closed and the matter was submitted for decision on May 26, 2016. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Chika Sunquist (complainant) made the Accusation in her official capacity Supervising Special Investigator for the Bureau of Real Estate.
2. Respondent is presently licensed and/or has licensing rights as a real estate salesperson under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
3. Respondent was initially licensed as a real estate salesperson on April 17, 1995. The license expired on August 17, 2015. There is a right of renewal for two years.
4. On July 21, 2015, respondent completed and signed a salesperson renewal application for licensure. The application was submitted to the Bureau on July 30, 2015.

5. On September 23, 2010, in the Superior Court of California, County of Los Angeles, Case No. 0SY03689, respondent entered a plea of nolo contendere and was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence (DUI), a misdemeanor. Imposition of sentence was suspended and respondent was placed on summary probation for three years on certain conditions, including that she pay fines and fees totaling \$1,538, and complete a first offender alcohol and drug education program.

6. On January 12, 2012, in the Superior Court of California, County of Los Angeles, Case No. 1SY08759, respondent entered a plea of nolo contendere and was convicted of violating Vehicle Code section 23152, subdivision (a), DUI, a misdemeanor. Imposition of sentence was suspended and respondent was placed on summary probation for three years on certain conditions, including that she pay fines and fees totaling \$1,858, and complete an 18-month second offender alcohol and drug education program.

7. On June 1, 2015, in the Superior Court of California, County of Los Angeles, Case No. 5SY03686, respondent entered a plea of nolo contendere and was convicted of violating Vehicle Code sections 14601.1, subdivision (a), driving with a suspended license, and 23152, subdivision (b), driving with a blood alcohol level of .08 percent or greater. Both offenses are misdemeanors. Imposition of sentence was suspended and respondent was placed on summary probation for 60 months on certain conditions, including that she serve 130 days in the county jail, pay fines and fees totaling \$377, and complete an 18-month multiple offender alcohol and drug education program. Respondent served 23 days of her jail sentence, serving the remainder in the Sober Living Program, an alcohol rehabilitation program.

8. On June 1, 2015, in the Superior Court of California, County of Los Angeles, Case No. 5SY02901, respondent entered a plea of nolo contendere and was convicted of violating Penal Code section 484/490.2, petty theft, a misdemeanor that is substantially related to the duties, functions and qualifications of a real estate salesperson. Imposition of sentence was suspended and respondent was placed on summary probation for 36 months on certain conditions, including that she serve five days in the county jail and pay fines and fees totaling \$220. The facts and circumstances underlying the conviction were that respondent walked out of a department store with merchandise without paying for the items. Respondent testified that she was on her cell phone when she walked out of the department store and was unaware that she had walked out of the store without paying for the merchandise. Her testimony is an impermissible collateral attack on her conviction.

9. Section 19 of the renewal application requires applicants to disclose all convictions within six years prior to the date of the application. In her application for the renewal of her license, respondent disclosed the conviction set forth in Factual Finding 7 but failed to disclose the convictions set forth in Factual Findings 5, 6 and 8.

10. Respondent testified that she had been dealing with many problems at the time she completed her application. She stated that she ended her relationship with her a long-time male friend at the same time that she was trying to comply with her probationary conditions imposed by the superior court including the DUI classes, AA meetings, and payment of her fines. While the problems that respondent was experiencing provide some mitigation, this fact does not excuse respondent's failure to disclose all of her convictions. Respondent had to have been aware of her conviction for petty theft because she entered her plea and was convicted on the same day as her June 1, 2015 conviction for DUI. She also must have known of her 2012 DUI conviction because she was participating in the 18-month alcohol education program for second DUI offenders.

11. Respondent testified that she no longer drinks but could not remember her sobriety date. She continues to attend AA meetings and has the support of her AA sponsor, her parents and her sister. Respondent also volunteers her time to a women's group and her church. In addition, respondent submitted reference letters from friends and former co-workers who attested to respondent's professionalism and integrity.

12. Respondent's sponsor testified at the hearing that he had been respondent's sponsor for "several years." He testified that respondent is working hard to maintain her sobriety.

13. Pursuant to Business and Professions Code Section 10106, complainant requests costs of investigation of this matter in the amount of \$640.10, and cost of enforcement in the amount of \$200.25. These costs are reasonable under section 10601.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's real estate salesperson license under Business and Professions Code sections 490, and 10177, subdivision (b), based on respondent's convictions that are substantially related to the duties, functions and qualifications of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(8), (a)(10), and (8)(11).

2. Complainant submitted reasonable costs of investigation under Business and Professions Code section 10106. Therefore, cause exists to grant complainant's request for the costs of investigation and enforcement.

3. California Code of Regulations, title 10, section 2912, sets forth criteria for rehabilitation. The factors set forth in section 2912 are applied as follows:

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department.

Respondent's last two convictions occurred one year ago.

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

Respondent did not owe restitution.

(c) Expungement of the conviction or convictions resulting from immoral or antisocial acts.

Respondent's convictions have not been expunged.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of section 290 of the Penal Code.

This factor is not applicable to this case.

(e) Successful completion or early discharge from probation or parole.

Respondent is still on probation.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

Respondent has not met this criterion in that she was arrested for DUI approximately one year ago.

(g) Payment of any fine imposed in connection with the criminal conviction.

Respondent is in the process of paying fines and fees imposed by the Superior Court.

(h) Correction of business practices responsible in some degree for the crime or crimes for which the licensee was convicted.

This factor is not applicable in this case.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

Respondent is now spending more time with her family and her AA sponsor.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial.

Respondent's family life is stable in that her parents and her sister are providing moral support for respondent's efforts at rehabilitation.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

There was no evidence presented addressing this factor.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

Respondent volunteers her time with a women's group and her church.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts. . .

Respondent has suffered from a serious drinking problem. Her last DUI conviction is only one-year old.

4. Respondent satisfied some of the applicable criteria of rehabilitation set forth in regulation section 2912. However, despite completing two alcohol education programs, including an 18-month second offender program after her 2012 DUI conviction, respondent continued to drink and drive, which resulted in a third DUI conviction in 2015. In addition, respondent was convicted of petty theft in 2015. Based on respondent's convictions and her failure to disclose all of her convictions in her 2015 renewal application, respondent's license should be revoked.

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ORDER

1. All licenses and licensing rights of respondent Kira Lyn Limongelli, under the Real Estate Law are revoked.

2. Respondent is hereby ordered to pay costs of investigation and enforcement in the amount of \$842.35 to the Bureau of Real Estate.

DATED: June 22, 2016

Humberto Flores

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings