

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

GITTE LELLAN,

Respondent.

Case No. H-37403 LA

OAH No. 2011080979

PROPOSED DECISION

Administrative Law Judge Michele Mann, State of California, Office of Administrative Hearings, heard this matter on November 30, 2011 in Los Angeles, California.

Diane Lee, Staff Attorney, Department of Real Estate of the State of California (Department) represented complainant Robin Trujillo, Deputy Real Estate Commissioner of the Department (Complainant).

Gitte Lellan, (Respondent), was present and represented herself.

Oral and documentary evidence and evidence by way of official notice was received and the matter was argued. The record was left open for 31 days in order for Respondent to submit certified copies of her plea bargain and court minute order. Respondent did not submit these documents and the matter was submitted on December 31, 2012.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant filed the Statement of Issues in her official capacity as a Deputy Real Estate Commissioner.

2. On August 16, 2010, Respondent applied to the Department for a real estate salesperson license. Respondent was previously licensed by the Department as a real estate salesperson (License No. 01042499) from September 7, 1989 through February 16, 2006.

Criminal Conviction

3. On or about February 3, 2005, in the United States District Court, Central District of California, Docket No. CR 04-1016(A)-NM, Respondent pled guilty, and was convicted of violating 18 U.S.C., section 1957, subdivision (a),¹ (money laundering, aiding and abetting), a felony.

4. The court sentenced Respondent to serve 27 months in prison, and upon her release, to be placed on parole for three years. The court further ordered Respondent to pay \$48,730 in restitution to Svetlana Safieva (\$39,227.65) and Ruben Umansky (\$9,502.35) in \$100.00 per month increments to be apportioned on a pro rata basis, to make immediate partial restitution in the amount of \$5000, and to refrain from being employed in any position that requires licensing or certification by any local, state or federal agency without prior approval of her parole officer. Additionally, the court recommended that the Bureau of Prisons conduct a mental health evaluation and provide any treatment deemed necessary for Respondent.

5. In May 2002, Respondent became acquainted with Iouri Mikhel (Mikhel), a criminal defendant who was in custody and charged with hostage taking (kidnapping), money laundering and other serious federal crimes. Although Mikhel's hostage died as a result of his kidnapping scheme, a ransom in the amount of \$ 969,000 (ransom money) was paid for the hostage's life and his release. When Mikhel learned that Respondent was a naturalized U.S. citizen originally born in Denmark who still maintained a bank account in Luxembourg, he asked Respondent to provide him with her bank account number, which she did. Mikhel caused to be wired \$48,730, a portion of the ransom money then located in his Barbados-based bank account, to Respondent's Luxembourg account. At hearing, Respondent explained that Mikhel had hired her to work for him as a paralegal. Respondent testified that his wire transfer to her account was for payment of her paralegal services (approximately \$25,000) and the remainder was designated for delivery to Mikhel's wife for her care.

¹ 18 U.S.C., section 1957, subdivision (a) states: Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

6. While Respondent may not have known about the source of the money Mikhel transferred to her personal bank account, she admits that she failed to inquire about it. Respondent did not inquire about the source of the money even after she discussed the matter with an attorney involved in Mikhel's criminal matter. The attorney told Respondent that Mikhel had asked him to wire transfer the money and he had refused to do so.

Mitigation and Rehabilitation

7. Respondent attributed her criminal conduct to the stress and grief associated with her son's role in a fatal automobile accident that occurred two years before her crime. In 2000, her son was convicted of vehicular manslaughter and deported to Denmark. Respondent's son was driving his car and caused an accident that took the lives of three people who were passengers in the car. The victims were the sons of longtime family friends. Her son was convicted of manslaughter and was eventually deported to Denmark.

8. Respondent paid all fines associated with the 2005 conviction. She has not completed making restitution payments to the victims and is not likely to complete restitution within the next year. She also remains on parole. Although still on parole, the parole board recently allowed Respondent to travel to Denmark to visit her son based on her compliance with her parole terms and her good behavior.

9. The evidence did not demonstrate that Respondent has been convicted of any other crime before or after her 2005 conviction and her license has not been the subject of any previous discipline by the Department.

10. Respondent disclosed the 2005 conviction in her application for licensure.

11. Respondent is in a stable domestic relationship with Gene Barger. Mr. Barger identified himself as Respondent's domestic partner. He has known Respondent for nine years. He wrote a letter attesting to Respondent's character, dated November 30, 2011, in which he describes Respondent as a person of character and integrity who "would not have let her guard down and end (sic) up involved with any of the various parties" involved in the underlying conviction but for the shattering grief and despair which consumed her in the aftermath of her son's manslaughter conviction and the related deaths. Mr. Barger described Respondent as active in volunteering and community service efforts to benefit United States veterans. He believes that Respondent is ready to return to the life she worked hard to build before the turmoil she experienced with her son's accident and her criminal conduct.

12. While Respondent expressed remorse for her criminal conduct, she did not express an understanding that her criminal conduct, involving laundering the ransom money from a kidnapping that resulted in the victim's death, was wrong. Respondent downplayed her role in the money laundering scheme, claiming that one-half the money Mikhel transferred to her account was payment for her paralegal services, and at times, claiming she did not know the money she received was part of the ransom money although her guilty plea

controverts her claim. She also claimed she needed the money to help finance her son's legal defense against deportation proceedings associated with his accident, and implied she would have done anything to help her son.

13. Although Respondent had a profoundly difficult time coping with her son's automobile accident and its aftermath when he was deported from the United States to Denmark, she was not forthright about the circumstances of her crime. She made contradictory statements in explaining many aspects of the crime, including how she became involved in the crime. She filed a written statement with the Department in January 2011, before the hearing, telling the Department she had been asked to help a joint government criminal task force in investigating criminal activity, including investigating Mikhel's crime and trying to locate the ransom money. She told the Department she was motivated to help because she claimed the government told her it would help keep her son from being deported for the manslaughter conviction associated with his auto accident. At hearing, she told a different story, specifically, that Mikhel's lawyer introduced her to him and she worked for Mikhel as a paralegal. Her credibility is in question due to the inconsistency of her statements about her crime and her lack of candor about its circumstances.

14. Similarly, Respondent's testimony that she had no reason to question the source of money funding the accused kidnapper's wire transfer to her was not credible, particularly given Respondent's other testimony at hearing that she accepted the wire transfer from Mikhel even after she spoke with an attorney involved in the same case who told her that Mikhel had propositioned him for use of a bank account for making a wire transfer but he refused to be involved.

15. Respondent did not submit evidence indicating that her parole officer has approved her employment in any position requiring licensing or certification by a local, state or federal agency (as required under the terms of her parole).

LEGAL CONCLUSIONS

Applicable Law

1. These proceedings are brought under the provisions of the Real Estate Law. (Bus. & Prof. Code, § 10100 et seq.)

2. Sections 475, subdivision (a), 480, subdivision (a)(1) and 10177, subdivision (b),² provide that the Commissioner of the Department may refuse to issue a real estate salesperson license if the applicant has been convicted of a misdemeanor or felony that is substantially related to the qualifications, functions or duties of a licensee.

² All further statutory citations are to the Business and Professions Code.

3. In considering whether a license should be denied on the basis of a criminal conviction or an act, the crime or act is deemed substantially related to the qualifications, functions or duties of a real estate licensee if it involves the doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or the employment of deceit, falsehood, or misrepresentation to achieve an end. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(4) and (8).)³

4. If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or act was committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee. (CCR § 2910, subd. (c).)

5. Respondent employed deceit, falsehood, or misrepresentation to achieve an end and also perpetrated her crime with the intent of conferring an economic or financial benefit on herself as shown by Factual Findings 3 through 7 and 11 through 14. She pled guilty and was convicted of aiding and abetting money laundering by accepting the transfer of the ransom money to her bank account in a foreign country. As a result, her criminal actions are substantially related to the qualifications, functions, or duties of a licensee as defined in CCR section 2910.

Violations

6. Cause exists to deny Respondent's application for a real estate license under sections 475, subdivision (a) (2), 480, subdivision (a)(1), and 10177, subdivision (b), and CCR section 2910, subdivision (a), because Respondent been convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensee, by reason of Factual Findings 3 through 7 and 11 through 14, and Legal Conclusions 1 through 5.

Licensing Considerations

7. CCR section 2911 provides criteria to evaluate the rehabilitation of a license applicant for purposes of considering whether to deny the license based on a crime or act committed by the applicant. The criteria include the passage of not less than two years since the most recent criminal act or conviction; making restitution to the person who suffered monetary losses; expungement of the criminal conviction; completion of probation or parole; payment of fines and monetary penalties imposed for the conviction; stability of family life and fulfillment of parental and family responsibilities since the conviction; completion or sustained enrollment in formal education or vocational training for self-improvement; significant or conscientious involvement in the community church or privately-sponsored programs; new and different social and business relationships that those which existed at the time of the crime; and a change in attitude from that which existed at the time of the crime.

³ Further references to the California Code of Regulation are cited as CCR.

8. In support of her rehabilitation, it has been over seven years since Respondent's 2005 conviction, she has no record of any other criminal convictions, she paid all fines associated with the conviction, and although she has not completed paying restitution to the victims, she has been diligent in making monthly payments, and she seems to have a stable family life at this time and she volunteers to help United States' veterans. (CCR S 2911; Factual Findings 8 through 11.) Respondent also expressed regret for her role in the money laundering scheme.

9. She has not had her conviction expunged; nor did she show any change in her social or business relationships from those that existed when she committed her crime. At this time, she remains on parole and has not completed making restitution payments. It is not known when she will complete paying the restitution of \$ 48,730 imposed on February 3, 2005 in \$100 increments. (Factual Finding 4.)

10. It is also a concern that she acted out of self-interest in agreeing to take the money, the kind of self-interest that would not be countenanced if she received a real estate license. (Factual Findings 4 through 7 and 12 through 14.) Respondent's claims of rehabilitation were not corroborated by any neutral witnesses who are unrelated to Respondent. Similarly, Respondent's suitability for employment in an activity licensed by the state, the issue here, was not corroborated by her parole officer, a condition of the terms of her parole. (Factual Findings 4 and 15). Her disparate versions of her actual role in the crime made under penalty of perjury or while she was under oath, belie her claim that she realizes her conduct was wrong. She also continues to justify her repeated failure to inquire about the funding source of the money wired to her, even after an attorney involved in the case told her he was similarly approached to be involved in the scheme and refused to do so. She has not offered convincing evidence that her attitude has changed from that which existed at the time of her crime. (Factual Findings 4 through 7 and 12 through 15.)

11. Considering all of the evidence, and more particularly that Respondent remains on parole, she has not completed making restitution payments to the victims of her crime, and she has not been forthright in explaining the circumstances of her crime, there is insufficient evidence that she is sufficiently rehabilitated. While it is clear that her grief for her son's situation was justified, it simply does not justify committing a felony. At this time, it is inconsistent with the public interest to issue Respondent a real estate salesperson license.

ORDER

Respondent's application for a real estate salesperson license is denied.

DATED: _____

MICHELE MANN
Administrative Law Judge
Office of Administrative Hearings