

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of Accusation of the California
Corporations Commissioner,

Complainant,

vs.

AVA JANNETTE HAWKINS-HENRY,

Respondent.

Case No. 963-1155

OAH No. L2003100648

DECISION

The attached proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Corporations as its Decision in the above-matter, with the following technical and minor change pursuant to Government Code Section 11517(c)(2)(C):

On page 3 of the Proposed Decision, in Paragraph 9, strike-out the fourth sentence and substitute the following sentence in its place: According to the Respondent, she was approved by the Escrow Agents' Fidelity Corporation.

On page 3 of the Proposed Decision, in Paragraph 14, strike-out the term "presidential" and insert the following term in its place: precedent

This Decision shall become effective on SEP 10 2004.

IT IS SO ORDERED SEP 10 2004.

DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

By WILLIAM P. WOOD
California Corporations Commissioner

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ORIGINAL

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PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on May 24, 2004.

Michelle Lipton, Corporations Counsel, represented the Commissioner of Corporations in the Department of Corporations of the State of California ("Department").

Respondent Ava Jannette Hawkins-Henry was present throughout the hearing and represented herself.

This matter was submitted on May 24, 2004.

FACTUAL FINDINGS

1. The Commissioner of Corporations and the employees in the Department filed the Accusation in this proceeding in their official capacity.

2. Mara Escrow Company ("Mara") holds an escrow license issued by the California Corporations Commissioner ("Commissioner") under the California Escrow Law (California Financial Code Section 17000 et seq.).

3. On or about September 20, 2002, Respondent Ava Jannette Hawkins-Henry submitted an employment application that she had completed and signed, to work as an escrow agent at Mara. Question 6 in the application asked: "have you ever been convicted of or pleaded nolo contendere to a misdemeanor or felony other than traffic violations." Respondent indicated that she had been convicted of "Misdemeanor (sic) Petty Theft—Charge 488 PC." Question 5 asked if she had been refused a license to engage in any business in California. Respondent answered yes to the question and indicated that she had

business in California. Respondent answered yes to the question and indicated that she had been denied a notary commission by the Secretary of State. In that proceeding, Respondent indicated that she had been convicted of driving under the influence of alcohol in 1996.

4. On or about February 20, 1986, Respondent, in the California Municipal Court in Westminster, was convicted of a violation of Penal Code Section 488 – petty theft – a misdemeanor. She was placed on probation. Respondent has satisfied all terms and conditions of the court's order. The court expunged the conviction pursuant to Penal Code Section 1203.4 in February 2003.

5. On January 16, 1997, Respondent, in the Superior Court of the State of California, County of Orange, entered a plea of guilty to a violation of Vehicle Code Section 23152 – driving under the influence of alcohol – a misdemeanor. The court ordered Respondent placed on a conditional sentence for a term of three years upon certain terms and conditions including enrolling and completing a Level Two First Offender Program, payment of a fine and costs, and restricted her driver's license for a period of 90 days. Respondent completed the terms and conditions imposed by the court. The case was closed on June 7, 2000. The use of controlled substances was not involved in her conviction.

6. Respondent did not specifically list her drunken driving conviction on her application submitted to the Department. She believed that traffic offenses were not required to be disclosed by the way the application question was worded. Her conviction was of a vehicle code violation and as a result of an automobile accident. Nevertheless, Respondent did list the denial of her application for a notary commission that did involve her DUI conviction and was revealed by an inspection of the file in that case. Respondent had no intent to mislead or obscure her driving under the influence conviction from the Department. She was candid in her responses and her disclosure of the notary commission proceeding in effect disclosed her driving conviction.

7. As worded in the application Respondent completed, Question 6 exempts disclosure of "traffic violations." The exemption contains no further elaboration. This is in contrast to the wording of such questions by other agencies. If the form of the question had exempted the disclosure of minor traffic citations that do not constitute a misdemeanor or felony offense, the result would be different but it does not do so.¹ Consequently, Respondent is found to have in good faith answered Question 6 correctly, according to her understanding. Additionally, she substantially disclosed the conviction by her reference to the proceedings before the Secretary of State.

8. With regard to her 1986 petty theft conviction, Respondent was in the process of a divorce proceeding and having financial difficulties. Originally, she was charged the having

¹ In the experience of this Administrative Law Judge, most other agencies in asking about prior convictions make it clear that only minor traffic offenses not constituting a misdemeanor are exempted from disclosure. Government Code Section 11425.50. No such distinction is made on the form used by Respondent in making her application in this case.

written five checks with knowledge that her account contained insufficient funds to cover them. The original charges were dismissed and she pled to the single count of petty theft. She made good on all of the checks and satisfied all of the other conditions imposed by the court. The conviction has been expunged. There have been no other problems of this sort since 1986 nor before that time.

9. Respondent has been an escrow assistant since 1983. She has worked for various companies. There have been no complaints about her work. She is member of the Association of Escrow Agents Fidelity Corp. It has only been with her last employer Mara Escrow that she has had to apply for a license since Mara is an independent escrow company. Respondent has not been employed since receiving notice of these proceedings.

10. Respondent is a single mother of two children ages 6 ½ and 5 years. She helps out in their school.

11. Respondent is a recovering alcoholic. She has been sober for seven years since May 5th, 1997. She is active in Alcoholics Anonymous and attends two meetings a week. She was a sponsor of another member for a period of time. She also is a speaker at AA meetings.

12. The 2000 decision denying Respondent's application for a notary commission from the Secretary of State gives a favorable account of Respondent. Although constrained by the applicable statutes from granting the commission in that case, Respondent was urged to reapply with that agency as soon as a year had passed from the issuance of that decision.

13. Respondent was truthful and credible in her testimony. Her demeanor was calm and direct. She answered questions without hesitation and with no attempt at evasion. She conveyed that she had been through a lot of problems but had changed her ways. Since achieving sobriety, she has been devoted to raising her family and doing her best in her chosen escrow work.

14. Complainant cited as a presidential decision in this matter the case of *In the Matter of the Accusation of: The California Corporations Commissioner, Complainant, v. Stacy Ann Maspera, Respondent*, Case No. 963-0326; OAH No. L2002090534. An examination of that decision reveals that it is distinguishable from the present case in that the Respondent in that case was not credible and the nature and surrounding circumstances in that case are not comparable to this situation.

15. No pattern of Respondent failing to disclose information on applications for licenses has been established. Consequently, her failure to disclose her petty theft application for a notary commission from the Secretary of State is not involved in this matter.

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LEGAL CONCLUSIONS

1. Respondent answered the questions on her application submitted to the Department in an honest and complete manner. By the wording on the application, she was not required to disclose her driving under the influence conviction although she substantially did disclose it by her reference to the proceedings filed with regard to her application for a notary commission from the Secretary of State. There was no nondisclosure on her application submitted to the Department or a violation of Financial Code Section 17702. This conclusion is based upon Paragraphs 3, 5, 6, and 7 of the Factual Findings.

2. It has not been established that it is in the best interest of the public to bar Respondent from any position of employment, management or control of any escrow agent under Financial Code Section 17423. Respondent has been truthful and candid in her testimony. She has been in the escrow business since 1983 and has had no complaints about her work in that capacity. She has had personal problems in 1986 and 1997. In both cases, she has demonstrated her rehabilitation from those matters. This conclusion is based upon Paragraphs 3 through 15 of the Factual Findings.

3. Cause exists, pursuant to Financial Code Sections 17423 (a) (2) and 17414.1(b) (7), to deny Respondent's application to the Department in that Respondent has been convicted of theft. However in the circumstances of this case, that is not an appropriate course of action in light of her rehabilitation since that 1986 conviction. It has been eighteen years since that occurrence. The conviction has been expunged as Respondent has satisfied all of the requirements imposed by the court including restitution of the money. There have been no complaints about her work as an escrow assistant since she began such work in 1983. She has been sober for seven years. She is raising a family of two children on her own. She assists at the children's school. She actively participates in Alcoholics Anonymous. Her life has completely changed from what it was at the time of both of her convictions.

ORDER

The application of Respondent Ava Jannette Hawkins-Henry submitted to the Department is approved.

Dated: June 21, 2004.

N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings