

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of:

CALIFORNIA CORPORATIONS
COMMISSIONER,

Complainant,

vs.

VALERIANO LANDEROS,

Respondent.

File No.: 963-1430

OAH No.: L2004060356

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Commissioner of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective SEP 08 2004.

IT IS SO ORDERED SEP 08 2004.

COMMISSIONER OF CORPORATIONS

By _____

rfm

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PROPOSED DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on July 13, 2004.

Judy L. Hartley, Senior Trial Counsel, represented Complainant California Corporations Commissioner.

Jeffrey E. Lieber, Attorney at Law, represented Respondent Valeriano Landeros (hereinafter "Respondent").

Oral and documentary evidence was received and the matter was submitted on July 13, 2004.

FACTUAL FINDINGS

1. William P. Wood, (hereinafter "Complainant") made the Accusation in his official capacity as the California Corporations Commissioner (hereinafter "Commissioner"). The Accusation seeks to bar Respondent from any position of employment, management, or control of any escrow agent on the basis that he has been convicted of a crime involving moral turpitude that is reasonably related to the qualifications, functions and duties of a person engaged in the escrow business.

2. On September 2, 2003, Capitol Hill Escrow, Co. ("Capitol Hill"), an escrow agent licensed by the Commissioner under the California Escrow Law (California Financial

Code§ 17000 et seq.), submitted a Statement of Identity and Employment Application for Respondent indicating that Respondent was employed with Capitol Hill as an escrow assistant. In response to Question No. 6 of the application, which asked if the applicant has ever been convicted of or pleaded nolo contendere to a misdemeanor or felony other than traffic violations, Respondent answered "Yes." Respondent indicated that he had been convicted of grand theft in October 2001. Based on Respondent's conviction and the subsequent investigation, the Commissioner barred Respondent from any position of employment, management or control of any escrow agent. Respondent filed a timely Notice of Defense and requested a hearing in the matter. The above-captioned hearing ensued.

3. On October 16, 2001, in the Superior Court of California, County of Los Angeles, Respondent was convicted on his plea of nolo contendere to one count of grand theft, in violation of Penal Code section 487, subdivision (a), a felony and a crime of moral turpitude that is reasonably related to the qualifications, functions, and duties of a person engaged in the escrow business. Respondent was placed on formal probation for a period of three (3) years and ordered to serve one day in county jail, less credit for one served. He was also ordered, among other terms and conditions of probation, to make restitution to Home Depot in the amount of \$3,556.27, to serve 480 hours of community service, CALTRANS, or Graffiti removal, and to pay the costs of probation services in the amount of \$50.00.

4. The facts and circumstances surrounding Respondent's conviction are that between April 2, 2001, and May 23, 2001, while employed as a cashier at Home Depot, Respondent participated in a scheme by which he scanned merchandise and processed them as returned items. In fact, the merchandise had not been returned and instead of returning the money to an actual customer, Respondent would take the money for himself. Respondent claimed that another employee suggested this scheme to him and that he only processed fraudulent returns "a couple times." However, Home Depot claimed that Respondent stole over \$15,000 by processing the fraudulent returns. Ultimately, as part of the plea agreement, Respondent was ordered to pay Home Depot \$3,556.27 in restitution for the money he stole.

5. Respondent successfully completed all of the terms and conditions of his probation. On June 4, 2003, pursuant to Penal Code section 17, Respondent's felony conviction was reduced to a misdemeanor, his probation terminated early pursuant to Penal Code section 1203.3, and, pursuant to Penal Code section 1203.4, his conviction was dismissed (expunged). Respondent has had no other criminal convictions.

6. On February 9, 2004, Respondent was issued an Escrow Agents Fidelity Corporations Certificate Card by the Escrow Agents' Fidelity Corporation.

7. Respondent is 25 years old and single. He is raising his two year-old daughter without any assistance from the daughter's mother. Respondent was 21 years old when he committed the grand theft offense at Home Depot. Since his conviction in 2001, Respondent has worked for five different companies, including Capitol Hill, in a three year period of time. From November 2002 until June 2003, Respondent worked for Mountainside Escrow as an escrow assistant. Mountainside inexplicably did not require Respondent to complete a

Statement of Identity and Employment Application with the Commissioner prior to employing him as an escrow assistant, as is required by law.

8. In June 2003, Respondent began working for Capitol Hill as an escrow assistant. Respondent's duties at Capitol Hill included general office work and sending out escrow packages for the escrow agents. Mihee Watson, the Escrow Manager and Respondent's immediate supervisor at Capitol Hill, testified that Respondent was a very consistent and reliable employee in that he always showed up for work and did not "goof around" at the office.

9. Watson stated that if Respondent is allowed to return to work at Capitol Hill Escrow, he would not be allowed to receive checks, issue checks, or write receipts for checks as an escrow assistant. Watson believed that Capitol Hill's system for tracking checks and documenting fund receipts would safeguard against any concerns regarding Respondent's committing theft or fraud. However, she admitted that the system was not fail safe and that it depended largely on the escrow officers' and their assistants' honesty to ensure that fraud or theft does not occur. Although Capitol Hill has a policy of locking checks inside a safe at the end of the day, Watson admitted that it would not be unusual for checks to remain on an escrow officer's desk during the day, leaving the checks exposed to anyone who had access to the office. Capitol Hill's proposed safeguards would be insufficient to guard against Respondent having access to the checks and receipts during the course of the day.

10. An escrow agent has a very high fiduciary responsibility to its customers and clients. An escrow agent is charged with processing millions of dollars of funds and proceeds for customers' real estate transactions. Honesty, integrity, and trustworthiness are imperative qualities that an escrow agent and its employees must possess in order that the public's interest is protected.

11. Respondent's conviction for grand theft less than three years ago raises grave concerns regarding his ability to work in an industry requiring such a high degree of integrity and honesty. Respondent's criminal offense for grand theft was against a former employer while performing his duties as a cashier. This heightens the concerns regarding his fitness to be employed in the escrow industry because Respondent has shown the willingness to steal from an employer and demonstrated the sophistication to commit such an offense. Respondent's theft occurred over a two month period without being detected and the actual amount of monies stolen has never been verified or confirmed. Although Capitol Hill believes that it can institute safeguards to facilitate Respondent's return to employment in its escrow office, clearly Respondent's honesty and integrity is the only protection against future harm to the public if he is to be employed by an escrow agent.

12. There simply has not been enough passage of time since Respondent's conviction for grand theft to determine whether he has sufficiently rehabilitated from that offense. Although Respondent has had his conviction expunged, an offense for grand theft is not only reasonably related, but substantially related to his duties as an escrow assistant.

Where the criminal offense is so closely related to the duties of an escrow agent, Respondent's bar from employment in the escrow industry is warranted.

13. There is insufficient evidence to establish that the public's interest can be protected if Respondent's is allowed to work in any position involving any duties with an escrow agent in this state. Respondent's conviction for grant theft from his former employee is substantially related to his qualifications, function, and duties as an escrow assistant.

LEGAL CONCLUSIONS

1. Any person who has, within the past 10 years, been convicted of or pleaded nolo contendere to any crime specified in subdivision (b) of section 17414.1 of the Financial Code shall not serve in any capacity as an officer, director, stockholder, trustee, agent or employee of an escrow agent, or in any position involving any duties with an escrow agent, in this state. (Fin. Code § 17414.1, subd. (a).) Section 17414.1, subdivision (b)(7), provides that criminal convictions for "offenses involving ... theft" are subject to the prohibition provided in section 17414.1, subdivision (a). (Fin. Code § 17414.1, subd. (b)(7).) Section 17414.1, subdivision (b), provides that an "offense," for purposes of the mandatory or automatic bar from employment in the escrow industry under section 17414.1, subdivision (a), does not apply if Respondent has obtained a certificate of rehabilitation from a court of competent jurisdiction under section 1203.4 of the Penal Code. (Fin. Code § 17414.1, subdivision (b).)

2. Section 17423, subdivision (a)(2), however, provides that the Commissioner may, after appropriate notice and opportunity for hearing, bar from any position of employment, management, or control any escrow agent, or any other person, if the Commissioner finds that the person has been convicted of or pleaded nolo contendere to any crime specified in section 17414.1, subdivision (b), which includes theft crimes. (Fin. Code § 17414.1, subd. (a)(2).) Section 17423, subdivision (g), provides that the provisions of Section 17414.1, exempting convictions for which a person has obtained a certificate of rehabilitation or expungement, "shall not apply to permit the reinstatement of any person barred by the commissioner pursuant to this section, nor prohibit the commissioner from bringing an any action pursuant to this section." (Fin. Code § 17423, subd. (g).) Thus, while the granting of a petition pursuant to Penal Code section 1203.4 takes Respondent out of the automatic and mandatory language of section 17414.1, subdivision (a), the certificate of rehabilitation shall nevertheless not prohibit the Commissioner from bringing an action to bar Respondent from employment with an escrow agent. (Fin. Code § 17423, subd. (g).)

3. Cause exists to bar Respondent from any position of employment, management or control of any escrow agent, pursuant to Financial Code section 17423, subdivision (a)(2), in that he was convicted of a crime that is reasonably related to the qualifications, functions and duties of a person engaged in the escrow business, by reason of Factual Findings 2 through 13.

4. There is insufficient evidence of rehabilitation to conclude that Respondent would not be a risk to the public interest if he is allowed to be re-employed in a position within an escrow agent's office.

ORDER

Respondent Valeriano Landeros shall be barred from any position of employment, management or control with any escrow agent in the State of California.

DATED: August 10, 2004

MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings