

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of:)
)
THE CALIFORNIA CORPORATIONS) Case No. 963-0326
COMMISSIONER)
) OAH No. L2002090534
)
Complainant,)
)
v.)
)
STACY ANN MASPERO,)
)
Respondent.)

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 Jan. 13, 2003

IT IS ORDERED Jan. 13, 2003

COMMISSIONER OF CORPORATIONS

By _____

**BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA**

In the Matter of the Accusation of

**THE CALIFORNIA CORPORATIONS
COMMISSIONER,**

Complainant,

v.

STACY ANN MASPERO,

Respondent.

Case No. 963-0326

OAH No. L2002090534

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on November 27, 2002.

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

Respondent, Stacy Ann Maspero ("Respondent"), was represented by Sammy M. Weiss, Attorney at Law.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

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FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. On or about March 8, 2002, Wilshire Escrow Company, a California licensed escrow agent, submitted a Statement of Identity and Employment Application, completed and signed by Respondent, and dated January 15, 2002. According to the Statement of Identity and Employment Application, Respondent sought work as an escrow assistant.

2. Question No. 6 on the Statement of Identity and Employment Application read:

“Have you ever been convicted of or pleaded nolo contendere to a misdemeanor or felony other than traffic violations?”

“NOTE: ‘Convicted’ includes a verdict of guilty by judge or jury, plea of guilty or of nolo contendere or a forfeiture of bail. All convictions must be disclosed even if the plea or verdict was thereafter set aside and the charges against you dismissed or expunged or if you have been pardoned. Convictions occurring while you were a minor must be disclosed unless the record of conviction has been sealed under Section 1203.45 of the California Penal Code or Section 781 of the California Welfare and Institutions Code.”

Respondent checked the box marked “no” in response to Question No. 6 and signed the Statement of Identity and Employment Application under penalty of perjury. Respondent’s answer to Question No. 6 was untrue.

3. On December 28, 1993, in Superior Court of California, County of Los Angeles, in Case No. SA 016091-01, Respondent was convicted, on her plea of guilty, of violation of Health and Safety Code section 11352 (Transport for sale of a narcotic/controlled substance), a crime reasonably related to the qualifications, functions and duties of an escrow assistant.

4. Respondent was placed on summary probation for a period of three years under various terms and conditions including service of 312 days under house arrest. Respondent successfully completed her probation.

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5. The facts and circumstances underlying the conviction are that, on December 1, 1993, Respondent attempted to board a commercial airliner at Los Angeles International Airport with 769.2 grams of cocaine hidden in her checked luggage.

6. On April 19, 2001, the Court granted Respondent's motion to set aside and vacate her guilty plea, enter a plea of not guilty and dismiss the case pursuant to Penal Code section 1203.4. The Order granting the dismissal contained the following language:

“... the defendant is required to disclose the above conviction in response to any question containing (sic) in any questionnaire or application for public office or for license by any state or local agency or for contracting with the California State Lottery.”

7. Virtually the same language is contained in the Order portion of the Petition and Order Respondent submitted to the Court, requesting the relief under Penal Code section 1203.4. Respondent's signature appears immediately above that section.

8. On or about May 10, 2002, Respondent provided the Department of Corporations (“the Department”) with a written explanation of the circumstances underlying her arrest and conviction (Exhibit 6). Her explanation that the suitcase in which the cocaine was found was her friend's rather than hers, and that Respondent had picked up that suitcase by mistake was not credible in light of the facts that, when the police detained her, (1) Respondent refused to permit police to search the suitcase, and (2) she lied to the police concerning her identity.

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9. At the administrative hearing, Respondent claimed she failed to disclose the conviction on the Statement of Identity and Employment Application because she made a mistake. She filled out applications for the Department and for Fidelity Corporation at the same time, unaware that they were two separate applications. She read the application for Fidelity Corporation carefully but the question in that application regarding criminal convictions applied only to offenses involving fraud, deceit, and the like. She then read the Department's application quickly and failed to understand the requirement that all convictions were to be disclosed. She further claimed she did not realize she was required to disclose the conviction following the 1203.4 dismissal because the judge failed to advise her of that fact and because she did not read far enough down on the Order to reach the section containing that information. Finally, she testified that she did not view the application as one for the Department of Corporations, but rather simply as an employment application. She described her failure to disclose the conviction on her application as "negligence" and "ignorance." Respondent's testimony regarding her failure to disclose her conviction on the Statement of Identity and Employment Application was not credible. Further, as is more fully explained below, neither negligence nor ignorance is a mitigating factor in this case, and both characteristics are antithetical to the qualities the Department seeks in an escrow assistant.

10. In addition, Respondent indicated on her Statement of Identity and Employment Application that the only employment she had had for the past ten years was at Wilshire Escrow from January 2, 2002 until the date of the application (January 15, 2002). That answer was also untrue. She had been employed elsewhere during that ten-year period. She testified that she believed the Department would know of her previous employment because all of her previous employment had been in the escrow industry. That testimony was not credible in light of her other testimony that she believed she was filling out a simple employment application rather than an application for the Department. Further, the form on which she disclosed her employment with Wilshire Escrow contains nine boxes for disclosure of previous employers. Even if she believed she was filling out a form for the Department, no reason existed for her to think she was not required to disclose all of her employers for the previous ten years or that she could place the onus of knowing that information on the Department. Finally, although Respondent was aware that all of her previous employment during the previous ten years had been in the escrow industry, there was no way for the Department to be aware of that fact. The question requesting previous employers for the past ten years did not limit the applicant solely to jobs in the escrow industry, but instead requested disclosure of all employment during the past ten years.¹

¹ Respondent's failure to disclose her previous employers over the previous ten years is not alleged as a ground for exclusion from any position of employment by, or management or control of any escrow agent, and that misrepresentation is not deemed as grounds for such. It is, however, viewed as a factor in aggravation.

11. As a mitigating factor, Respondent's employer is aware of her conviction and the present status of her employment application. He is happy with Respondent's work performance.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to bar Respondent from any position of employment, management or control of any escrow agent pursuant to Financial Code section 17423, subdivisions (a)(2) and (g), for conviction of a crime, as set forth in Findings 3, 4, 5 and 6.

2. Cause exists to bar Respondent from any position of employment, management or control of any escrow agent pursuant to Financial Code section 17702, for willfully making an untrue statement of a material fact in an application and willfully omitting a material fact which is required to be stated in an application, as set forth in Findings 1, 2, 3, 4, 5, 6 and 7.

Financial Code section 17423 states in pertinent part:

“(a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or bar from any position of employment, management, or control any escrow agent, or any other person, if the commissioner finds either of the following:

* * *

(2) That the person has been convicted of or pleaded nolo contendere to any crime . . . if that crime . . . involved any offense specified in subdivision (b) of Section 17414.1, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this division.”

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Financial Code section 17414.1 states in pertinent part:

“(a) Any person who has been convicted of or pleaded nolo contendere to any crime specified in subdivision (b) within the past 10 years . . . 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. This subdivision shall not apply to any person whose office, employment, ownership interest, or other participation in the business of a licensed escrow agent commenced prior to January 1, 1992.

“(b) Subdivision (a) applies to criminal convictions of . . . offenses including the following:

* * *

“(7) Offenses involving robbery, burglary, theft, embezzlement, fraud, fraudulent conversion or misappropriation of property, forgery, bookmaking, receiving stolen property, counterfeiting, controlled substances, extortion, checks, credit cards, or computer violations specified in Section 502 of the Penal Code.”

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