BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Of:	)	
	)	Case No. 963-0563
THE CALIFORNIA COMMISSIONER OF CORPORATIONS,	)	OAH Case No. L2002100694
Complainant,	)	
vs.	)	
TAMARA KAY JONES, formerly known as TAMARA KAY SCOTT,	)	
Respondent.	)	

FINAL DECISION

This matter regularly came before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on March 22, 2004.

Sean M. Rooney, Corporations Counsel, appeared on behalf of Demetrious A. Boutris, Corporations Commissioner ("Commissioner"), Department of Corporations ("Department").

Perry P. Polamero represented respondent.

The Commissioner seeks to bar respondent from working as an escrow clerk on the basis of respondent's criminal conviction and her failure to disclose it in her application for employment. Respondent asserts that the conviction does not constitute grounds to deny the application and that she is fully rehabilitated.

Oral and documentary evidence was received at the hearing. The record was left open for the submission of evidence and argument. On April 16, respondent submitted argument, two declarations (one by respondent containing correspondence to the Department and court records and one by Kimberly Fontaine). The documents are collectively marked for identification as Exhibit I. The Department did not submit any responsive evidence or objection by the May 3, 2004 deadline and the declarations contained in Exhibit I are received into evidence. The matter was submitted for decision on May 3, 2004.

On May 12, 2004 Judge Reyes issued a Proposed Decision concluding that it was not in the public interest to bar, censure, or suspend Respondent from working as an escrow clerk, and ordering the approval of Respondent's application for employment as an escrow clerk.

On August 20, 2004, the Commissioner issued an Order of Rejection of Proposed Decision pursuant to Government Code Section 11517(c)(1)(E) and invited further written argument to be submitted by September 27, 2004. The Commissioner received further written argument from both parties on or before that date.

The following constitutes the Final Decision of the California Corporations Commissioner.

FACTUAL FINDINGS

1. The Commissioner filed the Accusation and accompanying documents solely in his official capacity.

2. Home Escrow Company, Inc. ("Home") holds an escrow license issued by the Commissioner under the California Escrow Law (Financial Code section 17000 et seq.).[1] Home is a family-owned and -operated business founded in 1976 by George and Billie Jo Armijo ("G. Armijo" and "B. Armijo," respectively). G. Armijo passed away on May 18, 2001, and B. Armijo is semi-retired. Respondent's mother, Terry, and respondent's aunt, manager Deborah Armijo ("D. Armijo") are escrow agents. Home's escrow license has not been disciplined and the company's auditor testified about its sound bookkeeping and business practices.

3. On May 14, 2001, respondent submitted a Statement of Identity and Questionnaire ("Statement") to the Department for authorization to work as an escrow clerk for Home.

4. Respondent was required to answer question number 5 in the Statement, which states: "Have you ever been convicted of or pleaded nolo contendere to a misdemeanor or felony other than traffic violations?" Respondent checked the "No" box and did not provide any details in the available space.

5. Respondent's answer to question number 5 in the Statement is false in that she was convicted, on a plea of no contest, of a misdemeanor, as set forth in factual finding number 9 below.

6. Respondent knew, or should have known, that her answer to question number 5 in the Statement was false.

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[1] Unless otherwise stated, all further references are to the Financial Code.

7. Respondent's misstatement, and omission of details regarding the conviction set forth in factual finding number 9, is material in that the conviction and surrounding details can result in denial of the application.

8. Respondent did not disclose the conviction in reliance of family advice. She initially asked her mother if the conviction had to be disclosed. Respondent's mother reported that her father, G. Armijo, Home's founder and the undisputed authority in escrow matters at the firm, stated the conviction did not have to be disclosed because it was more than 10 years old. Respondent's testimony regarding her grandfather's advice was corroborated by her grandmother, B. Armijo, and by her aunt, D. Armijo. Respondent did not ask the Department whether the conviction had to be disclosed on the application.

9. In 1990, in the Municipal Court, Pomona Judicial District, County of Los Angeles, State of California, in Case number 89M09287, respondent was convicted, on her plea of no contest, of violating Penal Code section 470 (forgery), a misdemeanor. The court placed respondent on probation for 24 months on terms and conditions that included service of 50 days in jail and payment of fines and restitution in excess of $1,000. She had spent approximately 30 days in jail after her arrest and did not have to serve any additional time.

10. The incident that led to the conviction occurred on December 1, 1989. It was a time of change and turbulence for respondent. In late 1988, respondent's grandmother, with whom she lived, passed away. Respondent moved with her aunt, Chris Armijo ("C. Armijo"), and her aunt's boyfriend. Respondent graduated from high school in June 1989 and worked at Home as a file clerk during the summer of 1989. She started using drugs and alcohol with her aunt and her aunt's boyfriend. C. Armijo, who worked at Home for 11 years, was fired in October 1989 for working while under the influence of drugs or alcohol and for other attendance and performance problems. At the insistence of C. Armijo and her boyfriend, respondent took checks from Home's general account and cashed 3 or 4 of them, for a total of $300 to $400, forging her other grandmother's name; respondent was arrested attempting to cash a check for $2,500.

11. Respondent's conviction is substantially related to the qualifications, functions, and duties of an escrow clerk in that it involves acts of dishonesty.

12. Respondent complied with the terms of her sentence. On August 23, 2001, the court granted respondent's motion and dismissed the case pursuant to Penal Code section 1203.4.

13. Respondent changed her life after the conviction. She disassociated herself from her aunt, C. Armijo, and moved in with her mother. Respondent stopped using drugs and alcohol.

14. Respondent expressed sincere remorse about her conduct and the harm it caused her family.

15. The family refused to have contact with respondent for about 2½ years. Respondent asked for their forgiveness. As a tangible expression of her remorse, respondent also offered, free of charge, her personal services at the business; respondent has in fact performed cleaning and other tasks without charge at Home. B. Armijo described respondent's turnaround as remarkable and deems her trustworthy. D. Armijo testified respondent is no longer under the influence of D. Armijo's younger sister, C. Armijo, and that respondent is a totally different person. Believing respondent is fully rehabilitated, the family wants to assign more responsibility to respondent and ultimately employ her as an escrow agent.

16. Respondent has been gainfully employed since her conviction. She held entry-level jobs at K-Mart, Subway, Lincoln Properties, and Round Table Pizza. She rose to management positions in Subway and Round Table Pizza, where she worked for 4 and 7 years, respectively; she handled responsibilities at both jobs, including cash, without incident. In May 2001, an opening occurred at Home and the family asked respondent to work in the business. Respondent has been employed at Home since May 2001, performing receptionist and general clerical duties; she does not have responsibility for escrow accounts or over the handling of funds.

17. Home's manager, D.Armijo, testified respondent is an exemplary employee, one of the best she's ever employed. She has confidence in respondent's ability to properly and honestly handle client funds.

18. Respondent married in 1992. Her sister and niece, whom respondent has helped raise as her own daughter, live with them. The family regularly attends church, where respondent's father-in-law is the minister. Respondent and her husband volunteer their time 2 to 3 days each week to help feed the homeless.

19. a. The accusation contains the following allegation (paragraph 8): "As of the date of the filing with the COMMISSIONER, JONES also had a bench warrant issued for her arrest for failing to appear for a traffic infraction. This arrest warrant had been in the system since … at least May 1995. The COMMISSIONER informed Counsel for JONES in June 2002 about the pending bench warrant."

b. The docket of the Superior Court, County of San Bernardino, shows that "Tamara K. Jones," residing at 1260 West Arrow #296, Upland, California, was issued a citation on November 10, 1993 for violation of Vehicle Code section 27315(e) (failure to wear seat belt). A warrant was issued after the person issued the citation failed to appear.

c. Respondent credibly testified that she had not received the citation in question and did not know about the warrant. She also provided the following facts in support of her testimony: her purse, containing her driver's license, had been stolen on November 10, 1993; she did not own or drive a vehicle until 1997; and she had never lived at the address shown on the court records. Respondent's testimony is credible.

d. On advice of counsel, and viewing it as the most expeditious course of action to resolve the matter, on February 19, 2003 respondent paid a $140 fine and the arrest warrant was recalled. At the time, respondent believed, again on advice of counsel, that the Department would not pursue the traffic violation matter in the instant proceeding.

e. Respondent did not commit the offense alleged in the accusation and the citation does not otherwise constitute grounds to prevent her from working at Home.

20. Except as set forth in this Decision, all other allegations in the accusation, and all other contentions by the parties, are deemed surplus or lacking in merit.

LEGAL CONCLUSIONS

1. Section 17414 provides, in pertinent part:

> "(a) It is a violation for any person subject to this division or any director, stockholder, trustee, officer, agent, or employee of any such person to do any of the following:
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> (1) Knowingly or recklessly disburse or cause the disbursal of escrow funds otherwise than in accordance with escrow instructions, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity that constitutes theft or fraud in connection with any escrow transaction.
>
> (2) Knowingly or recklessly make or cause to be made any misstatement or omission to state a material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs."

2. Respondent knowingly made a material misstatement, and omitted material facts, in her application for employment as an escrow clerk, as set forth in factual finding numbers 3 through 8, which material misstatement and omission constitutes a violation of section 17414(a)(2).

3. Respondent did not violate section 17414(a)(1) by engaging in the conduct that led to her conviction because the conduct did not involve escrow funds or an escrow transaction, by reason of factual finding numbers 9 and 10 and legal conclusion number 1.

4. Section 17423(a) provides:

> "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 of any escrow agent, or any other person, if the commissioner finds either of the following:
>
> (1) That the censure, suspension or bar is in the public interest and that the person has committed or caused the violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the escrow agent or to the public.
>
> (2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgement, or any administrative judgement by any public agency, if that crime or civil administrative judgement involved any offense specified by 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."

Financial Code section 17414.1 prohibits employment of individuals who have been convicted of, or pleaded nolo contendere to, specified offenses, including offenses involving forgery, within the past ten years.

The ten-year limitation contained in section 17414.1 does not preclude the Commissioner from seeking to bar, censure or suspend the employment of individuals pursuant to section 17423, as the section does not contain the same ten-year limitation – the reference to 17414.1 in section 17423 is to the list of crimes, not to the specific limitations of section 17414.1. Of note, this ten-year reference may explain G. Armijo's advice to his niece.

5. Cause exists pursuant to section 17423(a)(2) to bar, censure, or suspend respondent from any position of employment, management or control of any escrow agent because she was convicted of a crime substantially related to the qualifications, functions and duties of an escrow clerk, by reason of factual finding numbers 9, 10, and 11 and legal conclusion number 3.

All evidence offered in mitigation and rehabilitation has been considered. The conviction is more than twelve years old. It occurred while respondent was young and under the influence of an older aunt. She has since experienced a remarkable transformation, one which her family has witnessed. The conviction has been expunged pursuant to Penal Code Section 1203.4. Therefore, actual employment bar, censure or suspension under Financial Code Section 17423(a)(2) is not necessary for the protection of the public.

6. Cause exists pursuant to section 17423(a)(1) to bar, censure, or suspend respondent from any position of employment, management or control of any escrow agent for violation of section 17414. As set forth in factual finding numbers 3 through 8 and legal conclusion numbers 1 and 2, respondent violated section 17414 by misstating a material fact in her application to the Commissioner for employment with an escrow agent.

7. Cause does not exist pursuant to sections 17414(a)(1) and 17423(a) to bar respondent from any position of employment, management or control of any escrow agent because it was not established that she disbursed escrow funds in violation of section 17414, as her conviction involved Home's business funds, by reason of factual finding numbers 9 and 10 and legal conclusion numbers 1 and 3.

ORDER

Respondent is hereby suspended from employment with an escrow agent for a period of fifteen (15) calendar days, to be completed within 60 days of the effective date of this decision. Respondent is further suspended from any position of management or control of an escrow agent for the maximum period of 12 months from the effective date of this decision. Respondent's application for employment with an escrow agent is otherwise approved.

This Final Decision shall become effective on OCT 27 2004.

IT IS SO ORDERED.

DATED: OCT 27 2004

WILLIAM P. WOOD
California Corporations Commissioner