BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of:	)	
	)	
THE CALIFORNIA CORPORATIONS COMMISSIONER	)	Case No. 963-0326
	)	
	)	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?
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> "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. SA016091-01, 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]

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[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:
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> (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.
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> "(b) Subdivision (a) applies to criminal convictions of . . . offenses including the following:
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> * * *
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> "(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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Possession of narcotics for sale is a crime involving moral turpitude. (Clerici v. Department of Motor Vehicles (1990) 224 Cal.App.3d 1015.) The term, moral turpitude, has been defined as follows:

> "Our Supreme Court has defined moral turpitude as 'an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.' (In re Craig (1938) 12 Cal.2d 93, 97 [82 P.2d 442].) Moral turpitude has also been described as any crime or misconduct committed without excuse, or any 'dishonest or immoral' act not necessarily a crime. (In re Higbie (1972) 6 Cal.3d 562, 569 [99 Cal.Rptr. 865, 493 P.2d 97].) The definition depends on the state of public morals and may vary according to the community or the times, as well as on the degree of public harm produced by the act in question. (Golde v. Fox (1979) 98 Cal.App.3d 167, 181 [159 Cal.Rptr. 864].) Its purpose as a legislated standard is not punishment but protection of the public. (Rice v. Alcoholic Beverage etc. Appeals Bd. (1979) 89 Cal.App.3d 30, 36 [152 Cal.Rptr. 285].)" (Clerici, supra, at 1027.)

By their very nature, the characteristics that define moral turpitude bear a substantial relationship to the qualifications, functions and duties of an escrow assistant. The substantial relationship involves far more than simply the crime itself. The crime reflects on the applicant's character. To the extent it involves a lack of honesty and/or integrity, it bears a substantial relationship to the applicant's fitness to practice in his/her chosen field. "[T]here is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice." (Golde v. Fox (1979) 98 Cal.App.3d 167, 176. See also, Clerici, supra, at 1029.)

Our society generally considers drug trafficking as one of the paramount examples of the kind of baseness, vileness and lack of integrity that constitutes moral turpitude. It is commonly known that drug trafficking and its natural outgrowths and consequences constitute one of society's major problems. Those who engage in drug trafficking reflect qualities on the opposite end of the spectrum from those generally manifested in the type of individuals who work in the escrow industry faithfully handling millions of dollars each and every day. By choosing to commit the crime of possession of a controlled substance for sale, Respondent chose to join the ranks of the former. Her crime is both one of the crimes addressed in Financial Code section 17414.1(b)(7) and is one reasonably related to the qualifications, functions and duties of an escrow assistant. Grounds to exclude Respondent from employment by an escrow agent would have existed had she met either criterion. Respondent met both.

Financial Code section 17414.1(b)(7) excludes from disqualification persons who have received a certificate of rehabilitation pursuant to Penal Code section 1203.4 or 4852.13. However, that provision does not to apply to actions, such as this one, brought pursuant to Financial Code section 17423. (See, Financial Code section 17423(g).) Further, the granting of a certificate of rehabilitation is not synonymous with a dismissal under Penal Code section 1203.4, nor is it automatic. It must be applied for upon proper grounds and its grant or denial is within the court's discretion. (Penal Code section 4852.13.) In this case, no evidence was offered to establish that Respondent had applied for or was granted a certificate of rehabilitation.

Respondent's failure to disclose her conviction on her Statement of Identity and Employment Application constituted additional grounds for the exclusion. It is insufficient for Respondent to state that she did not know she was required to disclose the conviction on an employment application after her case was dismissed pursuant to Penal Code section 1203.4, and that she made a mistake on the application by not reading it carefully enough, and that she did not realize she was filling out two applications (one for the Department and one for Fidelity Corporation), and that she thought she was merely filling out an employment application, and that her failure to disclose the conviction was caused by her "negligence" and "ignorance."

Respondent's lack of credibility with respect to the testimony referenced in the above paragraph is addressed in paragraphs 6, 7, 8 and 9 of the Factual Findings, above. (Another example of her lack of credibility is addressed in paragraph 10 of that section.) The credibility analysis need not be reiterated here. Suffice it to say that Respondent's various explanations were not credible and do not constitute the kind of mitigating evidence that would justify her employment as an escrow assistant.

Further, even assuming the truth of Respondent's explanation that her mistake on the Statement of Identity and Employment Application was one of "negligence" and "ignorance" triggered by her failure to read the question carefully, Respondent's conduct with respect to her completion of the application evidences her unfitness for the employment she seeks. Those who work in the escrow industry must not only possess and exercise the highest degree of honesty and integrity, they must also be extraordinarily vigilant about the details of their work. As with many of the service-related industries, negligence and ignorance are unacceptable characteristics in their representatives. For example, in Handeland v. Department of Real Estate (1976) 58 Cal.App.3d 513, 518, the Court stated:

> "Disciplinary procedures provided for in the Business and Professions Code, such as section 10177, subdivision (d), are to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman."

No reason exists to believe that the rationale underlying the disciplinary procedures referenced in the Financial Code differs significantly from that in the Business and Professions Code.

Financial Code section 17702 requires that a misrepresentation of material fact in an application be willful in order to be deemed unlawful. Given her lack of credibility, particularly coupled with the second misrepresentation in the application concerning her prior employment, it is not difficult to deem Respondent's failure to disclose her conviction to have been a "willful" act. However, even if her credibility had been unquestioned, her failure to disclose the conviction would nonetheless have been "willful."

The word "willfully," as used in Financial Code section 17702, is not defined therein. However, in Brown v. State Department of Health (1978) 86 Cal.App.3d 548, 554, the Court permitted the use of Penal Code section 7 to define terms in other codes when such terms were otherwise undefined. Penal Code section 7 defines "willfully" as follows:

> "The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage."

Respondent's failure to disclose her conviction on her Statement of Identity and Employment Application is deemed to have been willful for purposes of Financial Code section 17702.

Respondent has provided three grounds on which the Department may exclude her from a position of employment, management or control by an escrow agent. The Department acted properly in finding her ineligible for such employment.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent, Stacy Ann Maspero, is barred from any position of employment, management or control of any escrow agent.

DATED: December 16, 2002

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings