

**FILED**

**July 19, 2012**

DEPARTMENT OF REAL ESTATE

By  \_\_\_\_\_

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	
	)	H-11348 SF
GARY LYNN MOUNTAIN,	)	
	)	
Respondent.	)	

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DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on May 7, 2012, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

This Decision revokes a real estate license on grounds of the conviction of crimes.

The right to reinstatement of a revoked real estate license is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondent.

FINDINGS OF FACT

1.

On March 27, 2012, E. J. Haberer, II, made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, return receipt requested, to Respondent's last known mailing address on file with the Department on March 28, 2012.

On May 8, 2012, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (herein "the Code") as a real estate salesperson.

3.

On or about July 25, 2011, in the Superior Court of the State of California, County of Santa Clara, Case No. CC 941176, Respondent was convicted of violating Section 25401/25540(b) of the California Corporations Code (Communications Containing Untrue Statements and Omissions of Material Fact), Section 484/487 of the California Penal Code (Grand Theft) and Section 25110/25540(a) of the California Corporations Code (Offer to Sell and Sale of Unqualified Security-Issuer Transaction), all felonies and crimes which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

#### DETERMINATION OF ISSUES

1.

Cause for disciplinary action against Respondent exists with reference to the convictions set out in Paragraph 3, above, pursuant to Sections 490 and 10177(b) of the Code.

2.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

#### ORDER

The Department of Real Estate having met its burden of proof, it is hereby ordered that all licenses and licensing rights of Respondent GARY LYNN MOUNTAIN, under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on AUG 08 2012.

DATED: July 6, 2012

Real Estate Commissioner



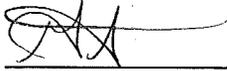
By WAYNE S. BELL  
Chief Counsel

**FILED**

**May 8, 2012**

1 Department of Real Estate  
2 P. O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

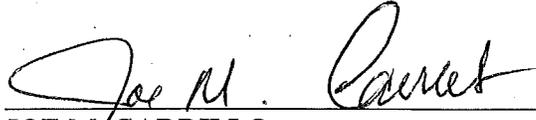
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11	In the Matter of the Accusation of	)	
12		)	NO. H-11348 SF
13	GARY LYNN MOUNTAIN,	)	
14		)	<u>DEFAULT ORDER</u>
	Respondent.	)	
		)	

15 Respondent, GARY LYNN MOUNTAIN, having failed to file a Notice of  
16 Defense within the time required by Section 11506 of the Government Code, is now in default.  
17 It is, therefore, ordered that a default be entered on the record in this matter.

18 IT IS SO ORDERED May 7, 2012

19 Real Estate Commissioner

20  
21  
22 By:   
23 JOE M. CARRILLO  
24 Regional Manager

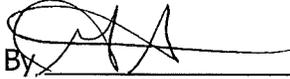
25  
26  
27

**FILED**

**March 28, 2012**

1 RICHARD K. UNO, Counsel (SBN 98275)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

DEPARTMENT OF REAL ESTATE

By  \_\_\_\_\_

5 Telephone: (916) 227-0789  
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7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 ) H-11348 SF  
13 GARY LYNN MOUNTAIN, )  
14 Respondent. ) ACCUSATION

15 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of the  
16 State of California, for cause of Accusation against GARY LYNN MOUNTAIN, (Respondent),  
17 is informed and alleges as follows:

18 1

19 Complainant makes this Accusation against Respondent in his official capacity.

20 2

21 Respondent is presently licensed and/or has license rights under the Real Estate  
22 Law, Part 1 of Division 4 of the Business and Professions Code (the Code) as a real estate  
23 salesperson.

24 3

25 On or about July 25, 2011, in the Superior Court of the State of California, County  
26 of Santa Clara, Case No. CC 941176, Respondent was convicted of violating Section  
27

1 25401/25540(b) of the California Corporations Code (Communications Containing Untrue  
2 Statements and Omissions of Material Fact), Section 484/487 of the California Penal Code  
3 (Grand Theft) and Section 25110/25540(a) of the California Corporations Code (Offer to Sell  
4 and Sale of Unqualified Security-Issuer Transaction), all felonies and crimes which bear a  
5 substantial relationship under Section 2910, Title 10, California Code of Regulations, to the  
6 qualifications, functions, or duties of a real estate licensee.

7 4

8 The facts alleged in Paragraph 3, above, constitute cause under Section 10177(b)  
9 (Further Grounds for Disciplinary Action-Conviction of Crime) and Section 490 (Conviction  
10 Substantially Related Crime) of the Code for suspension or revocation of Respondent's license  
11 under the Real Estate Law.

12 5

13 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
14 resolution of a disciplinary proceeding before the department, the commissioner may request the  
15 administrative law judge to direct a licensee found to have committed a violation of this part to  
16 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

17 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
18 of this Accusation and that upon proof thereof, a Decision be rendered imposing disciplinary  
19 action against all licenses and license rights of Respondent under the Code, for the reasonable  
20 costs of investigation and prosecution of this case, including agency attorney's fees and for such  
21 other and further relief as may be proper under provisions of law.

22  
23   
24 \_\_\_\_\_  
E. J. HABERER, II  
Deputy Real Estate Commissioner

25 Dated at Oakland, California  
26 this 27 day of March, 2012.

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