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**FILED**

**OCT 26 2022**

**DEPT. OF REAL ESTATE**

By 

9 BEFORE THE DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of ) No. H-05351 SD  
13 LINDSAY ANN HARDI, ) **ACCUSATION**  
14 Respondent. )  
15 \_\_\_\_\_ )

16 The Complainant, Veronica Kilpatrick, acting in her official capacity as a  
17 Supervising Special Investigator of the State of California, for cause of Accusation against  
18 LINDSAY ANN HARDI a.k.a. Lindsay Ann Carey a.k.a. Lindsay Ann Devlin ("Respondent").  
19 is informed and alleges as follows:

20 1.

21 All references to the "Code" are to the California Business and Professions Code  
22 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

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1 DEPARTMENT OF REAL ESTATE ("DRE") LICENSE HISTORY

2 2.

3 According to DRE records to date and publicly accessible online at the DRE's  
4 website ([https://www2.dre.ca.gov/PublicASP/pplinfo.asp?License\\_id=01334200](https://www2.dre.ca.gov/PublicASP/pplinfo.asp?License_id=01334200)), Respondent  
5 is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4  
6 of the Code) as a real estate salesperson ("RES"), Department of Real Estate ("DRE") license  
7 ID 01334200.

8 3.

9 According to DRE records to date and publicly accessible online at the  
10 aforementioned DRE website, Respondent was originally licensed on or about April 25, 2002.

11 4.

12 According to DRE records to date and publicly accessible online at the  
13 aforementioned DRE website, Respondent's mailing address of record is 520 W. Valley Pkwy,  
14 Suite A, Escondido, CA 92025, and Respondent's license is affiliated with responsible broker  
15 of record Brush Real Estate Services Inc (DRE license ID 01521710).

16 5.

17 According to DRE records to date and publicly accessible online at the  
18 aforementioned DRE website, Respondent's DRE license has no prior history of disciplinary  
19 action and will expire on April 24, 2026. Upon license expiration and pursuant to Code Section  
20 10201, Respondent will retain renewal rights, and pursuant to Code Section 10103, the DRE  
21 will retain jurisdiction.

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1 **FACTS DISCOVERED BY THE DEPARTMENT**

2 (CRIMINAL CONVICTION)

3 6.

4 May 18, 2021 Felony Conviction: Vehicle Code Section 23153(a)

5 (Orange County Case No. 19HM05730)

6 According to certified court records (certified on February 22, 2022), on or  
7 about February 14, 2020, in the Superior Court of California, County of San Diego, in Case No.  
8 CN410674 (DA No. OCN645), The People of the State of California v. Lindsay Ann Hardi, a  
9 one count Felony Complaint was filed that charged Respondent with violation of California  
10 Vehicle Code (“VC”) Section 23153(a) (driving under the influence of alcohol causing injury).

11 7.

12 According to the aforementioned certified court records, on or about October 16.  
13 2020, in San Diego County Case No. CN410674 (DA No. OCN645), an Amended Felony  
14 Complaint was filed that charged Respondent with violation of: VC 23153(a) (Count 1) and VC  
15 23153(b) (driving with a measurable blood alcohol causing injury) (Count 2), with special  
16 allegations (enhancements) that Respondent had a blood alcohol concentration (BAC) of 0.15%  
17 or more (VC 23578) and that Respondent inflicted great bodily injury upon a non-accomplice  
18 (Penal Code (“PC”) Section 12022.7(a)).

19 8.

20 According to the aforementioned certified court records, on or about April 15.  
21 2021, in San Diego County Case No. CN410674 (DA No. OCN645), Respondent pled guilty to  
22 Count 1 for her violation of VC 23153(a), with the special allegations as to VC 23578 and PC  
23 12022.7(a).

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1 9.

2 According to the aforementioned certified court records, on or about May 18,  
3 2021, in San Diego County Case No. CN410674 (DA No. OCN645), the court sentenced  
4 Respondent to five (5) years formal probation to expire on May 17, 2026 and ninety (90) days  
5 in custody. In addition, Respondent was ordered to pay court fines and fees and restitution to  
6 the victim.

7 (FAILURES TO REPORT)

8 10.

9 According to DRE records to date, Respondent did not report in writing to the  
10 Department, the aforementioned felony complaint in San Diego County Case No. CN410674  
11 (DA No. OCN645), as described above in Paragraphs 6 and 7, within thirty (30) days of said  
12 complaints.

13 11.

14 According to DRE records to date, Respondent did not report in writing to the  
15 Department, the aforementioned felony conviction in San Diego County Case No. CN410674  
16 (DA No. OCN645), as described above in Paragraph 8, within thirty (30) days of said  
17 conviction date.

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1 APPLICABLE SECTIONS OF THE REAL ESTATE LAW

2 12.

3 Code Section 490

4 Pursuant to Code Section 490 *Conviction of Crime – Relationship of Crime to*  
5 *Licensed Activity:*

6 “(a) In addition to any other action that a board is permitted to take against a  
7 licensee, a board may suspend or revoke a license on the ground that the licensee has been  
8 convicted of a crime, if the crime is substantially related to the qualifications, functions, or  
9 duties of the business or profession for which the license was issued.

10 (b) Notwithstanding any other provision of law, a board may exercise any  
11 authority to discipline a licensee for conviction of a crime that is independent of the authority  
12 granted under subdivision (a) only if the crime is substantially related to the qualifications,  
13 functions, or duties of the business or profession for which the licensee’s license was issued.

14 (c) A conviction within the meaning of this section means a plea or verdict of  
15 guilty or a conviction following a plea of nolo contendere. An action that a board is permitted  
16 to take following the establishment of a conviction may be taken when the time for appeal has  
17 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting  
18 probation is made suspending the imposition of sentence, irrespective of a subsequent order  
19 under Section 1203.4 of the Penal Code.

20 (d) The Legislature hereby finds and declares that the application of this section  
21 has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142  
22 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes  
23 and regulations in question, resulting in potential harm to the consumers of California from  
24 licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that

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1 this section establishes an independent basis for a board to impose discipline upon a licensee,  
2 and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not  
3 constitute a change to, but rather are declaratory of, existing law.”

4 13.

5 Regulation 2910

6 Pursuant to Regulation 2910 *Criteria of Substantial Relationship*:

7 “(a) When considering whether a license should be denied, suspended or  
8 revoked on the basis of the conviction of a crime, or on the basis of an act described in Section  
9 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related  
10 to the qualifications, functions or duties of a licensee of the Bureau within the meaning of  
11 Sections 480 and 490 of the Code if it involves:

12 (1) The fraudulent taking, obtaining, appropriating or retaining of funds  
13 or property belonging to another person.

14 (2) Counterfeiting, forging or altering of an instrument or the uttering of  
15 a false statement.

16 (3) Willfully attempting to derive a personal financial benefit through the  
17 nonpayment or underpayment of taxes, assessments or levies duly  
18 imposed upon the licensee or applicant by federal, state, or local  
19 government.

20 (4) The employment of bribery, fraud, deceit, falsehood or  
21 misrepresentation to achieve an end.

22 (5) Sexually related conduct affecting a person who is an observer or  
23 non-consenting participant in the conduct or convictions which require  
24 registration pursuant to the provisions of Section 290 of the Penal Code.

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(6) Willfully violating or failing to comply with a provision of Division 4 of the Business and Professions Code of the State of California.

(7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

(9) Contempt of court or willful failure to comply with a court order.

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

(11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.”

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Code Section 10177

(selected portions)

Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action:*

“The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation’s stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for themselves or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) (1) Entered a plea of guilty or no contest to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw that licensee’s plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.



1 (2) Notwithstanding paragraph (1), and with the recognition that  
2 sentencing may not occur for months or years following the entry  
3 of a guilty plea, the commissioner may suspend the license of a  
4 real estate licensee upon the entry by the licensee of a guilty plea  
5 to any of the crimes described in paragraph (1). If the guilty plea  
6 is withdrawn, the suspension shall be rescinded and the license  
7 reinstated to its status prior to the suspension. The department  
8 shall notify a person whose license is subject to suspension  
9 pursuant to this paragraph of that person's right to have the issue  
10 of the suspension heard in accordance with Section 10100..."

11 15.

12 Code Section 10186.2

13 (Reporting)

14 Pursuant to Code Section 10186.2 *Reporting of Convictions, Indictments and*  
15 *License Disciplinary Actions:*

16 "(a) (1) A licensee shall report any of the following to the department:

17 (A) The bringing of a criminal complaint, information, or indictment  
18 charging a felony against the licensee.

19 (B) The conviction of the licensee, including any verdict of guilty, or  
20 plea of guilty or no contest, of any felony or misdemeanor.

21 (C) Any disciplinary action taken by another licensing entity or authority  
22 of this state or of another state or an agency of the federal government.

23 (2) The report required by this subdivision shall be made in writing within 30  
24 days of the date of the bringing of the indictment or the charging of a  
25 felony, the conviction, or the disciplinary action.  
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1 (b) Failure to make a report required by this section shall constitute a cause for  
2 discipline.”

3 16.

4 Code Section 10106

5 (Costs)

6 Pursuant to Code Section 10106 *Cost Recovery of Investigations*:

7 “(a) Except as otherwise provided by law, in any order issued in resolution of a  
8 disciplinary proceeding before the department, the commissioner may request the  
9 administrative law judge to direct a licensee found to have committed a violation of this part to  
10 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

11 (b) In the case of a disciplined licensee that is a corporation or a partnership, the  
12 order may be made against the licensed corporate entity or licensed partnership.

13 (c) A certified copy of the actual costs, or a good faith estimate of costs where  
14 actual costs are not available, signed by the commissioner or the commissioner’s designated  
15 representative, shall be prima facie evidence of reasonable costs of investigation and  
16 prosecution of the case. The costs shall include the amount of investigative and enforcement  
17 costs up to the date of the hearing, including, but not limited to, charges imposed by the  
18 Attorney General.

19 (d) The administrative law judge shall make a proposed finding of the amount of  
20 reasonable costs of investigation and prosecution of the case when requested pursuant to  
21 subdivision (a). The finding of the administrative law judge with regard to costs shall not be  
22 reviewable by the commissioner to increase the cost award. The commissioner may reduce or  
23 eliminate the cost award, or remand to the administrative law judge where the proposed  
24 decision fails to make a finding on costs requested pursuant to subdivision (a).

1 (e) Where an order for recovery of costs is made and timely payment is not  
2 made as directed in the commissioner's decision, the commissioner may enforce the order for  
3 repayment in any appropriate court. This right of enforcement shall be in addition to any other  
4 rights the commissioner may have as to any licensee to pay costs.

5 (f) In any action for recovery of costs, proof of the commissioner's decision  
6 shall be conclusive proof of the validity of the order of payment and the terms for payment.

7 (g) (1) Except as provided in paragraph (2), the department shall not renew or  
8 reinstate the license of any licensee who has failed to pay all of the costs ordered under this  
9 section.

10 (2) The department may, in its discretion, conditionally renew or reinstate  
11 for a maximum of one year the license of any licensee who demonstrates  
12 financial hardship and who enters into a formal agreement with the  
13 department to reimburse the department within that one-year period for the  
14 unpaid costs.

15 (h) All costs recovered under this section shall be considered a reimbursement  
16 for costs incurred and shall be deposited in the Real Estate Fund to be available,  
17 notwithstanding Section 10451, upon appropriation by the Legislature.

18 (i) Nothing in this section shall preclude the department from including the  
19 recovery of the costs of investigation and enforcement of a case in any stipulated settlement."

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**FIRST CAUSE FOR DISCIPLINE**  
**(SUBSTANTIALLY RELATED CRIME)**

17.

The crime of which Respondent was convicted in San Diego County Case No. CN410674 (DA No. OCN645) (VC Section 23153(a)) as described above in Paragraphs 6 through 9, by its facts and circumstances, bears a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

18.

The crime of which Respondent was convicted in San Diego County Case No. CN410674 (DA No. OCN645), as described above in Paragraphs 6 through 9, constitutes cause under **Code Sections 490 and 10177(b)** for the suspension or revocation of Respondent's RES license, license rights and associated license endorsements, if any, under the Real Estate Law.

**SECOND CAUSE FOR DISCIPLINE**  
**(FAILURES TO REPORT)**

19.

Respondent's failure to report the bringing of the felony complaint in San Diego County Case No. CN410674 (DA No. OCN645), as described above in Paragraphs 6 and 7, constitutes cause for discipline under **Code Section 10186.2** of the RES license, license rights and associated license endorsements, if any, of Respondent under the Real Estate Law.

20.

Respondent's failure to report her conviction for violation of VC Section 23153(a) in San Diego County Case No. CN410674 (DA No. OCN645), as described above in Paragraph 8, constitutes cause for discipline under **Code Section 10186.2** of the RES license,

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1 license rights and associated license endorsements, if any, of Respondent under the Real Estate  
2 Law.

3 **COSTS**

4 21.

5 **Code Section 10106** provides, in pertinent part that in any order issued in  
6 resolution of a disciplinary proceeding before the Department, the Commissioner may request  
7 the administrative law judge to direct a licensee found to have committed a violation of this  
8 part to pay a sum not to exceed the reasonable costs of investigation and enforcement of the  
9 case.

10 WHEREFORE, Complainant prays that a hearing be conducted on the  
11 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing  
12 disciplinary action against all licenses and/or license rights and/or associated license  
13 endorsements under the Real Estate Law (Part 1 of Division 4 of the California Business and  
14 Professions Code) of LINDSAY ANN HARDI, for the cost of investigation and enforcement as  
15 permitted by law, and for such other and further relief as may be proper under applicable  
16 provisions of law.

17 Dated at San Diego

18 this 20 day of October, 2022.

21 *Veronica Kilpatrick*

22 \_\_\_\_\_  
Veronica Kilpatrick  
Supervising Special Investigator

23  
24 cc: Lindsay Ann Hardi  
25 Brush Real Estate Services Inc  
26 SD Enforcement – V. Kilpatrick  
Sacto.

27 DRE Accusation against Lindsay Ann Hardi, H-05351 SD