

FILED

SEP 30 2010

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

*[Handwritten Signature]*

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In the Matter of the Accusation of )  
 )  
GREGORY TREYONE SHORTER, )  
 )  
Respondent. )  
\_\_\_\_\_ )

NO. H-5366 SAC  
OAH NO. N-2010040934

DECISION

The Proposed Decision dated August 18, 2010, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension 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.

This Decision shall become effective at 12 o'clock noon on

October 20, 2010.

IT IS SO ORDERED 9/29, 2010.

JEFF DAVI  
Real Estate Commissioner

*[Handwritten Signature]*  
\_\_\_\_\_

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GREGORY TREYONE SHORTER,

Respondent.

Case No. H-5366 SAC

OAH No. 2010040934

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 14 and July 16, 2010, in Sacramento, California.<sup>1</sup>

Annette E. Ferrante, Real Estate Counsel, represented Tricia D. Sommers (complainant), a Deputy Real Estate Commissioner with the Department of Real Estate (Department).

Mark A. Pruner, Attorney at Law, represented Gregory Treyone Shorter (respondent), who was present.

Evidence was received on June 14 and July 16, 2010. The record was left open to allow respondent to file a character reference from a broker, complainant to file objections to that reference, and both parties to file closing briefs. Respondent filed an undated letter from Darrel G. McMurtry, which was marked for identification as Exhibit C and admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d).<sup>2</sup> Complainant filed written objections to Exhibit C, which were marked for identification as Exhibit 14. Respondent filed a closing brief, which was marked for identification as Exhibit

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<sup>1</sup> This matter was consolidated for hearing, but not for decision, with a Statement of Issues filed against respondent in Case No. H-5367 SAC, OAH No. 2010040930.

<sup>2</sup> Government Code section 11513, subdivision (d), provides:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

D. Complainant filed a closing brief, which was marked for identification as Exhibit 15.<sup>3</sup> The record was closed, and the matter was submitted for decision on July 27, 2010.

### FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.

2. On May 10, 2005, respondent was issued a real estate salesperson license. The license expired on May 9, 2009. Complainant seeks to revoke respondent's salesperson license based upon the convictions described in Findings 3 through 8 below.<sup>4</sup>

#### Convictions

3. On October 1, 2008, in the Yolo County Superior Court, respondent, on a plea of no contest, was convicted of violating Penal Code section 484, subdivision (a), theft, a misdemeanor.

4. The shoplifting incident underlying this conviction occurred on May 25, 2006. Respondent's description of the incident differed from the information set forth in the police report.<sup>5</sup> Respondent testified that he was with a group that stole bottles of liquor from a grocery store. He denied that he stole the liquor. He also denied that he knew that the group intended to steal the liquor when they entered the store. He asserted that he was just "with the wrong individuals in the wrong place at the wrong time." In the police report, a police officer states that he viewed a security video, which showed respondent and another suspect attempting to conceal the liquor bottles inside their clothing before walking out of the store.

5. Respondent's denial of criminal conduct was not credible. Respondent cannot impeach his conviction. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449 ["Regardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged."]) By pleading no contest, respondent stands convicted of every element of the crime.

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<sup>3</sup> On July 27, 2010, complainant filed a letter, which was marked for identification as Exhibit 16, objecting to a letter from respondent, which was attached to respondent's closing brief. Respondent submitted a response, dated July 27, 2010, and marked for identification as Exhibit E, stating that respondent's letter should be considered only as argument. The letter attached to respondent's brief has been considered only as argument for purposes of this proposed decision.

<sup>4</sup> In the Statement of Issues filed against respondent in Case No. H-5367 SAC, OAH No. 2010040930, complainant seeks to deny respondent's application for a broker license.

<sup>5</sup> The police report was admitted pursuant to the *Lake v. Reed* (1997) 16 Cal.4th 448: The percipient observations of the police officers and the admissions of respondent were admitted as direct evidence; the statements of third parties were admitted as administrative hearsay.

6. When respondent engaged in the criminal conduct underlying his shoplifting conviction, he was on probation for the conviction set forth in Finding 9(b) below.

7. On December 10, 2008, in the Yolo County Superior Court, respondent, upon a plea of no contest, was convicted of violating Vehicle Code section 23152, subdivision (b), driving with 0.08 percent or more, by weight, of alcohol in his blood (DUI), a misdemeanor.

8. The incident underlying respondent's DUI conviction occurred on December 18, 2007. At the time, respondent was working as a bartender at a bar and restaurant. That day, he was learning how to make drinks and was tasting drinks as he went along. He admitted to drinking a mixed drink made with rum that was more potent than he realized. After driving two people home, he hit a garage in an apartment parking lot. When he was stopped by the police, the Preliminary Alcohol Screening, or PAS, measured his blood alcohol content at .201 percent.

Matters in Aggravation

9. In the Accusation, complainant alleges the following three convictions against respondent as matters in aggravation:

- (a) On January 24, 2005, in Yolo County Superior Court Case No. 040003954, on a plea of no contest, respondent was convicted of violating Penal Code section 415, subdivision (1), fighting in a public place, a misdemeanor.
- (b) On January 24, 2005, in Yolo Superior Court Case No. 020004426, on a plea of no contest, respondent was convicted of violating Penal Code section 417, subdivision (a)(1), exhibiting a deadly weapon, a misdemeanor.
- (c) On January 24, 2005, in Yolo County Superior Court Case No. 020004426, on a plea of no contest, respondent was convicted of violating Penal Code section 422, threatening crime with intent to terrorize, a felony.

10. The incident underlying respondent's conviction for fighting in a public place occurred on May 23, 2004. Respondent belonged to a fraternity while he was a student at U.C. Davis. On May 23, 2004, the fraternity held a party. Many uninvited guests showed up. Several fights broke out. Respondent testified that he did not engage in any of these fights but, instead, tried to break them up. According to respondent, he was arrested as he was peacefully escorting an uninvited guest off the property. The police report states that respondent was one of three people involved in a physical fight in the front of the fraternity.

Respondent's denial of involvement in the fight was not credible. He cannot impeach his conviction. By pleading no contest, respondent stands convicted of every element of the crime.

11. The incident underlying respondent's convictions for exhibiting a deadly weapon and threatening crime with intent to terrorize occurred on July 10, 2002, in a parking lot in Davis. The police report indicates that the victim reported that, as he was walking through the parking lot, respondent expressed anger that his car had earlier been broken into. According to the victim, respondent then went to his vehicle, removed a handgun, showed the victim the handgun, and stated that he would "kill whoever broke into" his vehicle.

At the hearing, respondent denied threatening the victim with a gun. He asserted that he took a pellet gun from his vehicle, but he did not point it at the victim or threaten him.

Respondent's testimony was not credible. Ryan Rocha, one of respondent's character witnesses, testified that respondent told him that someone had broken into respondent's car and respondent went into their house with a pellet gun to "scare them." Once again, respondent cannot impeach his conviction. By pleading no contest, respondent stands convicted of every element of the crimes.

12. On January 24, 2005, respondent was placed on three years' probation on his misdemeanor conviction for exhibiting a deadly weapon. Respondent was granted a deferred entry of judgment on his felony conviction for threatening crime with intent to terrorize, conditioned upon his successful completion of probation on the misdemeanor charge.

13. On October 25, 2006, the Deputy Probation Officer filed a Declaration and Order Re: Violation of Probation in the Yolo County Superior Court. In his declaration, the Deputy Probation Officer stated that respondent had violated the terms of his probation by: (1) failing to notify his probation officer of a change of address; (2) being arrested for violating Penal Code section 459, entering a house with intent to commit larceny (which was subsequently dismissed); (3) failing to complete the sheriff's work program in lieu of serving jail time; and (4) failing to make any payments toward his court-ordered financial obligations.

14. On November 9, 2006, the Yolo County Superior Court revoked respondent's probation.

15. On December 8, 2006, the Deputy District Attorney for Yolo County filed a First Amended Declaration and Order Re: Violation of Probation. In his declaration, the Deputy District Attorney stated that respondent had failed to comply with the terms of his probation by: (1) failing to keep his probation officer informed of a change of address; (2) being charged with felony and misdemeanor counts relating to the shoplifting incident (Finding 3); (3) being charged in two other matters that were subsequently dismissed; (4) failing to complete the sheriff's work program in lieu of jail time as ordered by the terms of

his probation; and (5) failing to make any payments toward his court-ordered financial obligations.

16. On December 10, 2008, when respondent was convicted of his DUI (Finding 7), the Yolo County Superior Court entered an order admitting respondent to formal probation on his felony conviction for threatening crime with intent to terrorize and his misdemeanor conviction for exhibiting a deadly weapon. The court placed respondent on formal probation for three years. The court also ordered respondent to serve 120 days in jail, gave him credit for one day served, and ordered him to pay fines and fees.

17. Under the terms of the court's order, respondent's probation is scheduled to end in December 2011. On August 22, 2008, respondent successfully completed a first offender DUI program.

18. Respondent was born on May 9, 1982. He is a graduate of U.C. Davis. Although he received his a real estate salesperson license in 2005, he has worked only for about one year as a real estate agent, from July 5, 2006, to July 19, 2007, for William L. Lyon & Associates, Inc. He also has a real estate appraiser trainee license issued by the Office of Real Estate Appraisers (OREA). He worked as a real estate appraiser trainee for California Property Appraisals for approximately seven months, from May to December 2007.

19. From November 2007 until October 2009, respondent was the general manager/head bartender at Soga's/21-7, a bar and restaurant. He currently works part-time as a bartender/bouncer at the Davis Graduate, a sports bar. He is also working part-time as a property manager for an apartment complex in Davis, doing tasks such as property maintenance and power-washing. He does not do any of the "paperwork" for the apartment complex, such as "signing up" renters.

20. Through his college fraternity, respondent has become involved in a big brother program, mentoring boys who do not have father figures in their homes. Respondent takes these boys to various activities, such as the movies or a water park. He also helps them with their homework. Respondent also attends church two to three times a month.

21. Respondent testified that he no longer associates with the group of friends he had when he was arrested in 2006 for shoplifting. Respondent is not married and has no children.

22. Respondent called four character witnesses: Ebony Nunley, Sherman McMurtry, Brian Liao, and Ryan Rocha. All of these witnesses are either friends or co-workers of respondent from his work as a bartender. They all testified that respondent displays competency and initiative in his bartender job, is adept at handling difficult customers, and is honest in handling the business's receipts.

23. Respondent did not call any witnesses who have either employed or worked with him as a real estate salesperson or an appraiser trainee. Consequently, there were no witnesses who testified to respondent's competence or integrity in these positions.

24. Respondent submitted six letters of reference, which were admitted as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d). One of these letters was signed by 61 people.

Two of these letters were written by Darrel G. McMurtry, a Broker Associate for Coldwell Banker. In his letter dated April 24, 2010, Mr. McMurtry states that he has known respondent for six years, and has watched respondent work. According to Mr. McMurtry, respondent has "great work ethics, works hard and has drive to get ahead including graduating from a top university."

In an undated letter, Mr. McMurtry states he has been an active broker for 40 years. Mr. McMurtry has seen respondent "in person, for at least two years, as the manager of a bar/restaurant, fulfilling his obligation to his owner and obeying the laws of the state and city and not once did he ever show any sign of negligence." It is Mr. McMurtry's opinion that respondent's "convictions, individually and all together, are not substantially related to the qualifications, functions or duties of a licensee" of the Department. Mr. McMurtry believes that respondent is qualified to be a broker.

There is no indication in either of Mr. McMurtry's letters that he is an expert on the real estate laws relating to substantial relationship or is otherwise qualified to give a legal opinion. Consequently, his opinion about whether respondent's criminal convictions are substantially related to the qualifications, functions or duties of a real estate salesperson is given no weight. There is also no indication in Mr. McMurtry's letters that he has ever seen respondent work in any capacity other than as a bartender. Since there was no evidence that respondent has ever worked as a real estate salesperson for Mr. McMurtry or Coldwell Banker, Mr. McMurtry's opinion as to respondent's qualifications as a real estate salesperson is given no weight. Most importantly, Mr. McMurtry did not state in either of his letters that he is willing to hire respondent as a real estate salesperson and supervise his work.

25. In California Code of Regulations, title 10, section 2912, the Department has set forth the criteria to be applied when reviewing whether a real estate license should be revoked when the licensee has been convicted of a crime.<sup>6</sup>

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<sup>6</sup> California Code of Regulations, title 10, section 2912 provides:

Criteria of Rehabilitation (Revocation or Suspension).

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

26. Respondent has engaged in some rehabilitation. His work with the big brother organization is praiseworthy. But when all the rehabilitation criteria in California Code of Regulations, title 10, section 2912 are considered, respondent did not show that he has been sufficiently rehabilitated to retain his salesperson license. He denied any wrongdoing in

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(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.



four of his convictions. (Findings 3-11.) His denials were not credible. It has been less than two years since his most recent conviction. (Finding 7.) In 2006, he stole liquor from a grocery store, a crime of dishonesty. (Findings 3 and 4.) He engaged in criminal conduct while he was on criminal probation. (Finding 6.) He is currently on criminal probation, which is not scheduled to end until December 2011. He has not worked as a real estate salesperson for three years. He offered no evidence to show that there is a real estate broker currently willing to hire him as a salesperson and supervise his work.

27. Real estate salespersons are expected to act with honesty and integrity toward their clients, the public and the Department. When respondent's recent convictions for shoplifting and DUI are reviewed with the aggravating evidence of his three earlier convictions, it would be contrary to the public interest, safety and welfare to permit respondent to retain his real estate salesperson license.

### LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 490, a real estate salesperson license may be revoked "on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

2. Pursuant to Business and Professions Code section 10177, subdivision (b), a real estate salesperson license may be revoked if a real estate licensee has "[e]ntered a plea of guilty or nolo contendere 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...."

3. In California Code of Regulations, title 10, section 2910, the Department has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions or duties of a licensee. Subdivision (a) of section 2910, in relevant part, provides that a conviction will be deemed to be substantially related if it evidences:

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

[¶] ... [¶]

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

[¶] ... [¶]

(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.

[¶] ... [¶]

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

4. Respondent's conviction for theft (Finding 3) is substantially related to the qualifications, functions and duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (4) and (8). Respondent's driving while under the influence of alcohol posed a threat of substantial injury to another. His DUI conviction (Finding 7) is therefore substantially related to the qualifications, functions, and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivision (a)(8). As the court explained in *Griffiths v. Superior Court (Medical Board of California)* (2002) 96 Cal.App.4th 757, 770, "Driving while under the influence of alcohol ... shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society." Respondent's theft and DUI convictions, when coupled with his three convictions pled as matters in aggravation (Finding 9), demonstrate a pattern of repeated and willful disregard of the law. They are therefore substantially related to the qualifications, functions, and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivision (a)(10). Respondent's convictions for theft and DUI (Findings 3 and 7) establish cause to revoke his real estate salesperson license under Business and Professions Code sections 490 and 10177, subdivision (b).

5. During the hearing, respondent argued that the fact that OREA granted him an appraiser trainee license should bear some weight in this matter. Respondent's argument is without merit. The Department is not bound by the licensing decisions of OREA. The two entities are independent and have different criteria for granting and revoking licenses. The fact that respondent may have received an appraiser trainee license from OREA is irrelevant to the determination of whether his real estate salesperson license should be revoked.

6. Respondent also argued that because he disclosed the convictions described in Finding 9 when he applied for his real estate salesperson license, complainant cannot rely on those convictions as matters in aggravation in this case. This argument is also without merit. When respondent was first licensed in 2005, he was on probation for the crime of exhibiting a deadly weapon, a misdemeanor; sentencing for his conviction for threatening crime with intent to terrorize, a felony, had been deferred. Due to his criminal conduct in 2006 and 2007, his probation for exhibiting a deadly weapon was revoked, and he was placed on formal probation for both his misdemeanor and his felony convictions. Given these significant changes in circumstances, respondent's convictions in 2005 can be relied upon as matters in aggravation in this case.

7. When all the evidence is considered, complainant submitted clear and convincing evidence to revoke respondent's real estate salesperson license. As set forth in Findings 26 and 27, respondent did not submit sufficient evidence of rehabilitation to establish that it would be consistent with the public interest, safety and welfare to allow him to retain his license.

ORDER

All licenses and licensing rights of respondent under the Real Estate Law, Business and Professions Code section 10000 et seq., including his real estate salesperson license, are REVOKED.

DATED: August 18, 2010



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KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings

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FILED

MAR 25 2010

DEPARTMENT OF REAL ESTATE

By H. Mat

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-5366 SAC  
13 GREGORY TREYONE SHORTER, )  
14 Respondent. ) ACCUSATION  
15 )

16 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner  
17 of the State of California, for cause of Accusation against GREGORY TREYONE SHORTER,  
18 (hereinafter "Respondent"), is informed and alleges as follows:

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20 The Complainant makes this Accusation in her official capacity.

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

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26 On or about October 1, 2008, in the Superior Court of the State of California,  
27 County of Yolo, Case No. 060003081, Respondent was convicted of violating Section 484(a)

1 of the California Penal Code (Theft), a misdemeanor and a crime which bears a substantial  
2 relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications,  
3 functions or duties of a real estate licensee.

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5 On or about December 10, 2008, in the Superior Court of the State of California,  
6 County of Yolo, Case No. 080000338, Respondent was convicted of violating Section 23152(b)  
7 of the California Vehicle Code (Driving Under the Influence), a misdemeanor and a crime which  
8 bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to  
9 the qualifications, functions or duties of a real estate licensee.

10 MATTERS IN AGGRAVATION

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12 On or about January 24, 2005, in the Superior Court of the State of California,  
13 County of Yolo, Case No. 040003954, Respondent was convicted of violating Section 415(1)  
14 of the California Penal Code (Fighting in Public Place), a misdemeanor.

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16 On or about January 24, 2005, in the Superior Court of the State of California,  
17 County of Yolo, Case No. 020004426, Respondent was convicted of violating Section 417(a)(1)  
18 of the California Penal Code (Exhibiting Deadly Weapon), a misdemeanor.

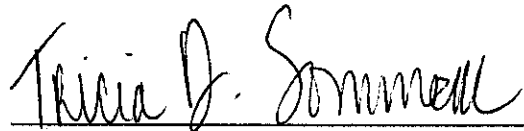
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20 On or about January 24, 2005, in the Superior Court of the State of California,  
21 County of Yolo, Case No. 020004426, Respondent was convicted of violating Section 422 of  
22 the California Penal Code (Threatening Crime With Intent to Terrorize), a felony.

23 8

24 The facts alleged in Paragraphs 3 and 4, above, constitute a cause under Sections  
25 490 (Conviction of Crime) and 10177(b) (Further Grounds for Disciplinary Action – Conviction  
26 of Crime) of the Code for suspension or revocation of all licenses and license rights of  
27 Respondent under the Real Estate Law.

1                    WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
3 action against all licenses and license rights of Respondent under the Code, and for such other  
4 and further relief as may be proper under the provisions of law.  
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7                    TRICIA D. SOMMERS  
8                    Deputy Real Estate Commissioner

9                    Dated at Sacramento, California,  
10 this 24<sup>th</sup> day of March, 2010.  
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