

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
SEP 19 2005

DEPARTMENT OF REAL ESTATE

By K. Contreras

\* \* \*

In the Matter of the Accusation of)

YAN QI,

Respondent.

) NO. H-9128 SF

) OAH NO. N-2005040573

DECISION

The Proposed Decision dated August 29, 2005, 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 11, 2005.

IT IS SO ORDERED

9-14-05

JEFF DAVI  
Real Estate Commissioner

[Signature]

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

YAN QI,

Respondent.

Case No. H-9128 SF

OAH No. N2005040573

**PROPOSED DECISION**

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 9, 2005. Theresa Wong provided English-Chinese and Chinese-English interpretation.

Deidre L. Johnson, Counsel, represented complainant E. J. Haberer II, Deputy Real Estate Commissioner, State of California.

Respondent Yan Qi was present and represented by Phillip M. Adleson, Esq.

The matter was submitted on August 9, 2005.

**FACTUAL FINDINGS**

1. Respondent Yan Qi is presently licensed and has license rights under the Real Estate Law as a real estate salesperson. Her salesperson license was issued on August 22, 2001.

2. Respondent is a native of China. She graduated from high school there and attended three years of college at the Liaoning Technical College, where she studied financial management and accounting. Respondent immigrated to the United States in February 1999, at the age of 26.

3. Upon her arrival in the United States, respondent married Mr. Hon-tao Yu, a man about 20 years older than she. She had a miscarriage in 1999. She had a second miscarriage some time thereafter. She now has two young children. Respondent has had difficulty adjusting to the language and culture of the United States, married life, the miscarriages, and having children.

4. A few months after her arrival in the United States in 1999, and around the time of her miscarriage, respondent committed a shoplifting offense when she took a

pregnancy test kit and other small items from a Safeway store. Safeway recovered the items respondent took. Complainant did not charge this offense as a cause for discipline, but cites it as a matter in aggravation.

5. Respondent worked with GT USA Gateway Travel from October 2000 to April 2003, with C & H International Travel from June to October 2003, and with Global Express Travel from January 2004 to October 2004. In addition to working in the travel business, respondent worked in real estate with ACEL Investment & Development and currently with Entrust Realty & Mortgage. Entrust Realty & Mortgage is located in Sacramento, but respondent works out of her San Jose home so that she can be with her children. She has not been fired from or been disciplined in any of her jobs.

6. On March 25, 2004, respondent was convicted, on a plea of nolo contendere, of a violation of Penal Code section 484/488 (theft/petty theft), a crime that bears a substantial relationship to the qualifications, functions and duties of a real estate licensee. Imposition of sentence was suspended and respondent was placed on three years court probation on terms that included payment of \$282.50 in fines, and two days in a weekend work program. Respondent has complied with the terms of her probation.

7. Respondent's conviction was for an offense that occurred on New Year's Day, January 1, 2004. It was a holiday, and respondent was at home with her two young children. Respondent's husband was in the house, but was with his friends. Respondent felt very lonely and depressed. She remembers smelling food cooking, and being sad that her husband was not celebrating the holiday with her. She went to a Safeway store in San Jose and bought some groceries. She also concealed a bottle of wine, some Listerine, two packs of razor blades and other small items on her person and left the store without paying for those items. She was detained by store security personnel and turned over to San Jose police officers. Safeway recovered the items respondent took.

8. Respondent's two theft offenses were manifestations of her problems adjusting to the changes in her life in the United States. Respondent understood this and in April 2004 voluntarily sought the help of Sylvia Hsiang, a Chinese-speaking Licensed Marriage and Family Therapist. Hsiang works for the Behavioral Health Services Department at El Camino Hospital and also has a private practice. Hsiang holds a master's degree in clinical psychology.

9. Hsiang has seen respondent for 12 therapy visits in the past year. Hsiang has diagnosed respondent as having "adjustment disorder with mixed anxiety and depressed mood." Hsiang described this as the lowest level of psychological problem under the DSM-IV. Hsiang attributed respondent's psychological problems and her two theft offenses to the stresses respondent faced as a new immigrant, wife, and mother.

10. Respondent is remorseful about her theft offenses. She has taken positive steps to change and improve her situation. Her therapist believes respondent has made good progress and is not likely to be involved in such incidents in the future. Respondent

continues with her therapy. Respondent's husband has been emotionally distant and her therapist has advised respondent's husband to come in for couples counseling. Respondent's husband recognizes the stresses respondent has been under, and has agreed to attend couples counseling.

11. Respondent and her husband work out of their home. They own their own home and cars and are not in debt, but the family is dependent on both their incomes.

12. Respondent is a member of a Milpitas church. She is not involved in other community activities because of work and parental responsibilities.

### LEGAL CONCLUSIONS

1. Complainant has alleged only respondent's 2004 conviction (Factual Finding 6) as cause for the suspension or revocation of respondent's license. Under Business and Professions Code section 490, the Real Estate Commissioner may suspend or revoke a license on the ground that the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee. Respondent's 2004 conviction is substantially related to the qualifications, functions and duties of a real estate licensee, in that it involved an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Cause exists to suspend or revoke respondent's license pursuant to section 490.

2. Under Business and Professions Code section 10177, subdivision (b), the commissioner may suspend or revoke the license of a real estate licensee who has been convicted of a felony or a crime involving moral turpitude. Respondent's 2004 conviction was for a theft crime, and involved moral turpitude. Cause exists to suspend or revoke respondent's license pursuant to section 10177, subdivision (b).

3. The department's regulations set forth criteria for evaluating the rehabilitation of an applicant for a license. (Cal. Code Regs., tit. 10, § 2912.) About 18 months have elapsed since respondent's conviction. Respondent remains on probation, but has complied with the terms of her probation thus far. Her conviction was not related to her real estate work. Respondent voluntarily sought counseling, and has made progress in her therapy. She is thus establishing better familial and social relationships, stabilizing her family life, and fulfilling her parental and familial relationships. Most importantly, her own testimony, and the testimony of her husband and her therapist show that respondent has had a positive change in attitude from that which existed at the time of her theft offenses. On balance, the evidence establishes respondent's rehabilitation, and that it would not be against the public interest to allow respondent to practice real estate with a restricted license.

### ORDER


All licenses and licensing rights of respondent Yan Qi are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to

Business and Professions Code section 10156.5 if respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this decision. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that code:

1. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
  - (a) That the employing broker has read the decision of the commissioner which granted the right to a restricted license; and
  - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewed real estate license, taken and successfully completed the continuing education requirements of article 2.5 of chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the commissioner may order the suspension of

the restricted license until respondent presents such evidence. The commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: *August 29, 2005*

  
STEVEN C. OWYANG  
Administrative Law Judge  
Office of Administrative Hearings

1 DEIDRE L. JOHNSON, Counsel  
2 SBN 66322  
3 Department of Real Estate  
4 P. O. Box 187007  
5 Sacramento, CA 95818-7007  
6 Telephone: (916) 227-0789

FILED  
FEB 23 2005

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

11 In the Matter of the Accusation of )  
12 YAN QI, ) NO. H-9128 SF  
13 Respondent. ) ACCUSATION  
14 )

15 The Complainant, E. J. HABERER II, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of Accusation  
17 against YAN QI, is informed and alleges as follows:

18 I

19 YAN QI (hereinafter referred to as Respondent) is  
20 presently licensed and/or has license rights under the Real  
21 Estate Law (Part 1 of Division 4 of the California Business and  
22 Professions Code) (hereinafter Code) as a real estate  
23 salesperson.

24 II

25 The Complainant, E. J. HABERER II, a Deputy Real Estate  
26 Commissioner of the State of California, makes this Accusation  
27 against Respondent in his official capacity.


1 III

2 On or about March 25, 2004, in the California Superior  
3 Court, County of Santa Clara, Respondent was convicted of a  
4 violation of Section 484/488 of the California Penal Code  
5 (Theft/Petty Theft), a misdemeanor and a crime involving moral  
6 turpitude, and/or a crime which bears a substantial relationship  
7 under Section 2910 of Title 10, California Code of Regulations,  
8 to the qualifications, functions or duties of a real estate  
9 licensee.

10 IV

11 The facts alleged above constitute cause under  
12 Sections 490 and/or 10177(b) of the Code for the suspension or  
13 revocation of all license(s) and license rights of Respondent  
14 under the Real Estate Law.

15 WHEREFORE, Complainant prays that a hearing be  
16 conducted on the allegations of this Accusation and that upon  
17 proof thereof a decision be rendered imposing disciplinary action  
18 against all license(s) and license rights of Respondent under  
19 the Real Estate Law (Part 1 of Division 4 of the Business and  
20 Professions Code), and for such other and further relief as may  
21 be proper under other provisions of law.

22  
23   
24 E. J. HABERER II  
25 Deputy Real Estate Commissioner

26 Dated at Oakland, California,  
27 this 17 day of February, 2005.