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DEPARTMENT OF REAL ESTATE
By L. West

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

LI LI,

Respondent.

No. H-9317 SF

ORDER DENYING REINSTATEMENT OF LICENSE
BUT GRANTING A RIGHT TO RESTRICTED LICENSE

On June 18, 2004, a Decision was entered in Case No. H-8663 SF revoking Respondent's real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on July 21, 2004. On January 3, 2006, a Decision was entered in Case No. H-9317 SF revoking Respondent's restricted real estate salesperson license.

On April 4, 2008 Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has

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1 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real
2 estate salesperson license.

3 The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*
4 *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and
5 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the
6 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

7 The Department has developed criteria in Section 2911 of Title 10, California
8 Code of Regulations to assist in evaluating the rehabilitation of an applicant for reinstatement of
9 a license. Among the criteria relevant in this proceeding are:

10 Section 2911(a) The passage of not less than two years since the most recent
11 criminal conviction or act of the applicant that is a basis to deny the departmental action sought.
12 (A longer period will be required if there is a history of acts or conduct substantially related to
13 the qualifications, functions or duties of a licensee of the department.)

14 On January 13, 2005, in Santa Clara County Superior Court, Respondent was
15 convicted of the crime of Petty Theft in violation of Penal Code Sections 484 and 488, a
16 misdemeanor. This conviction resulted in the initial suspension and outright revocation of
17 Respondent's restricted real estate salesperson license. Respondent was placed on three years
18 probation, ordered incarcerated for 10 days, and ordered to pay restitution and fines. In view of
19 Respondent's initial conviction, the three years that has elapsed since her second conviction is
20 not enough time for Respondent to demonstrate rehabilitation.

21 Section 2911(k) Correction of business practices resulting in injury to others or
22 with the potential to cause such injury. Respondent has been unemployed since license
23 revocation. There is no evidence that Respondent has been active in the conduct of a real estate
24 business or otherwise acted in a fiduciary capacity since license revocation. Respondent has not
25 demonstrated satisfaction of Section 2911(k).

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1 Consequently, I am not satisfied that Respondent is sufficiently rehabilitated to
2 receive an unrestricted real estate salesperson license. Additional time and evidence of correction
3 as a restricted real estate salesperson is necessary to establish that Respondent is rehabilitated.

4 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
5 reinstatement of Respondent's real estate salesperson license is denied.

6 A restricted real estate salesperson license shall be issued to Respondent pursuant
7 to Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following
8 conditions prior to and as a condition of obtaining a restricted real estate salesperson license
9 within nine (9) months from the date of this Order:

- 10 1. Respondent shall take and pass the real estate salesperson license examination.
11 2. Respondent shall submit a completed application and pay the fee for a
12 restricted real estate salesperson license.

13 The restricted license issued to Respondent shall be subject to all of the provisions
14 of Section 10156.7 of the Business and Professions Code and to the following limitations,
15 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

16 A. The restricted license issued to Respondent may be suspended prior to hearing
17 by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of
18 nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a
19 real estate licensee.

20 B. The restricted license issued to Respondent may be suspended prior to hearing
21 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
22 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
23 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
24 license.

25 C. Respondent shall not be eligible to apply for the issuance of an unrestricted
26 real estate license nor the removal of any of the limitations, conditions or restrictions of a

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1 restricted license until two (2) years have elapsed from the date of the issuance of the restricted
2 license to respondent.

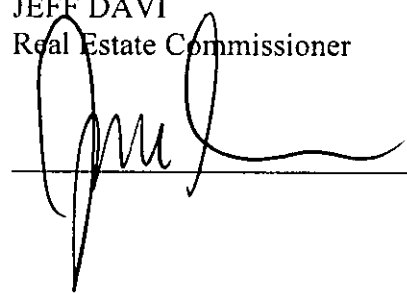
3 D. Respondent shall submit with any application for license under an employing
4 broker, or any application for transfer to a new employing broker, a statement signed by the
5 prospective employing real estate broker on a form approved by the Department of Real Estate
6 which shall certify:

7 1. That the employing broker has read the Decision of the Commissioner which
8 granted the right to a restricted license; and

9 2. That the employing broker will exercise close supervision over the
10 performance by the restricted licensee relating to activities for which a real estate license is
11 required.

12 This Order shall become effective at 12 o'clock noon on JAN 02 2009

13 IT IS SO ORDERED

14 12-11-08
15 JEFF DAVI
16 Real Estate Commissioner
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
JAN -8 2006

DEPARTMENT OF REAL ESTATE

By *[Signature]*

In the Matter of the Accusation of)
LI LI,) NO. H-9317 SF
Respondent.) OAH NO. N-2005080046
_____)

DECISION

The Proposed Decision dated December 12, 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 JAN 27 2006.

IT IS SO ORDERED 1-3-06.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

LI LI,

Respondent.

Case No. H-9317 SF

OAH No. N 2005080046

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on November 30, 2005.

David B. Seals, Counsel, represented complainant E. J. Haberer II, Deputy Real Estate Commissioner of the State of California.

Roger D. Wintle, Attorney at Law, Heritage Law Group, 99 Almaden Boulevard, Suite 710, San Jose, CA 95113, represented respondent Li Li, who was present.

The matter was submitted on November 30, 2005.

FACTUAL FINDINGS

1. Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a restricted real estate salesperson.
2. Respondent was first issued a real estate salesperson license on May 26, 2000.
3. On July 21, 2004, the Real Estate Commissioner revoked respondent's salesperson license and issued respondent a restricted license.¹ The commissioner's action was based on respondent's conviction, on October 10, 2002, of a violation of Penal Code section 484/488 (petty theft), a misdemeanor.
4. On January 13, 2005, respondent was convicted upon her plea of no contest of a violation of Penal Code section 484/488 (petty theft), a misdemeanor. Imposition of sentence was suspended and respondent was placed on court probation for three years, ordered to serve 10 days in jail or on work release, pay fines and fees in the approximate

¹ Department of Real Estate Case No. H-8663, OAH N2004030410.

amount of \$150, and make restitution in a manner to be determined. Respondent has served her sentence, paid her fines and fees, and made restitution. On March 8, 2005, the court reduced respondent's probation from three years to two years; she will complete probation on January 13, 2007.

5. The facts and circumstances that gave rise to this conviction are that, on October 19, 2004, respondent took merchandise with an approximate value of \$350 from Macy's without paying for it. Respondent has written a letter of apology to Macy's.

6. Respondent is 47 years old. She holds a degree in literature from Dalian University in China. After graduating from university, respondent went to work for Dalian Publishing Company. She has been married to Tianhua Tang for more than 20 years. They moved from China to Wisconsin in 1991 so that respondent's husband could pursue his doctorate in physics. After six years in Wisconsin, the couple moved to California. Respondent and her husband have one son, who is in college.

Since obtaining her salesperson license in 2000, respondent has worked exclusively for Beach Dog Investments in San Jose, which does business as RE/MAX Valley Properties.

Respondent believes that she shoplifted because she "felt a lot of pressure." When she is under pressure she feels like she wants to go out and take a walk and then "bad things happen." Respondent realized that she had a problem after her second arrest. She sought treatment with Pei Chen Hsia, a licensed clinical social worker. Respondent testified that she sees Ms. Hsia every week, for one hour each time. (Ms. Hsia indicates that she has seen respondent a total of seven times.) According to respondent, Ms. Hsia has told her not to go shopping when she feels pressure; instead, respondent should visit a friend, go to the movies or call Ms. Hsia.

After her second conviction, respondent also chose to discuss her situation with her husband's sister, Mei Tang, who is a psychologist and a psychology professor in Cincinnati. The two of them have talked regularly by telephone.

Since her second conviction, respondent and her husband have agreed that respondent should have an allowance so that she can purchase clothes that she wants. The family did not have a budget for respondent before her second theft conviction.

Respondent attends church every Sunday in Cupertino. She also serves on the board of her homeowner's association.

Respondent is clearly ashamed of her convictions. She broke down in uncontrollable tears when she testified that she felt she had hurt her family.

Respondent would like to continue working as a real estate salesperson. She contributes to the family income and her son's education, and feels that she needs to work.

7. Tianhua Tang testified on his wife's behalf. He is a principal engineer for Genesis Microchip. He holds a doctorate degree from the University of Wisconsin and bachelor's and master's degrees from Dalian University, all in physics, and 10 patents related to his work in physics.

Mr. Tang testified that respondent's convictions had a "very big impact" on their family. He believes that he has unfairly burdened respondent with the stresses of his own career, and that this additional burden caused respondent to commit the two thefts. Mr. Tang stated that, the morning before her first theft, he and respondent had a "big argument." She committed the second theft the day that he had a very important job interview with Genesis.

In Mr. Tang's view, attending church will help change respondent's behavior as she will not focus as much on material things.

Mr. Tang believes that it has been helpful for respondent to talk to Ms. Hsia and to his sister, and he supports her participation in counseling.

8. Dennis Badagliacco testified on respondent's behalf. He has been a licensed real estate broker for 25 years. Mr. Badagliacco is the president of Big Dog Investments, where he supervises about 130 real estate agents. He knows respondent, and he has supervised her work for the past four years.

Mr. Badagliacco has never had a problem with respondent. Her work is "fine," her files are complete, and her documents are submitted on time. He has never had any clients complain about respondent. RE/MAX Valley Properties does not maintain a trust account; all payments are logged in and turned over to a title company. Mr. Badagliacco has never had a problem with respondent's handling of money, and has never had a problem with respondent arising out of her access to private homes.

Mr. Badagliacco is willing to continue supervising respondent if she is allowed to retain her restricted license. He cannot think of anything he would do differently with her in the future, because he never experienced a problem with her in the past.

9. Pei Chen Hsia submitted a letter in support of respondent. Ms. Hsia states that respondent was in counseling from November 3, 2004, to December 22, 2004, for a total of four sessions, and from October 21, 2005, to the present for a total of three sessions. Ms. Hsia writes that respondent "truly regretted what she did and swore she would never do it again." Ms. Hsia states that respondent's "prognosis is good." She recommends that respondent should be allowed to keep her license "because it is her livelihood."

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 provides that a license may be revoked if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued. California Code of Regulations, title 10, section 2910, sets forth the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves "[d]oing 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" (subd. (a)(8)), or "[c]onduct which demonstrates a pattern of repeated and willful disregard of the law" (subd. (a)(10)).

2. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be revoked if the applicant has been convicted of a felony or a crime involving moral turpitude.

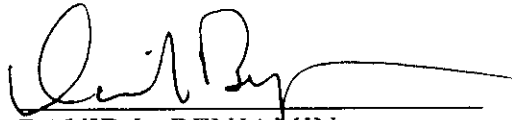
3. Respondent's 2005 conviction for violation of Penal Code section 484/488 (petty theft) is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(8) and (a)(10). The conviction is also for a crime of moral turpitude. The conviction, therefore, constitutes cause to revoke respondent's license under Business and Professions Code section 490, and under Business and Professions Code section 10177, subdivision (b).

4. Respondent is an educated, professional woman who is embarrassed by her convictions and ashamed of the impact they have had on her family. Respondent, however, has not been consistent in seeking professional help to address her shoplifting problem, and she overstates, perhaps inadvertently, the frequency of her counseling sessions with Ms. Hsia. Even after having her license revoked, respondent has not been able to conform her conduct to the law, and the evidence does not provide any sound basis on which to conclude that respondent's conduct will change in the future. Although Ms. Hsia believes that respondent's prognosis is good, she does not offer an explanation of why respondent stole in the past, or why she will not steal in the future. Giving respondent a budget to buy clothes, as respondent's husband suggests, may be helpful, but there is no indication that respondent stole for financial reasons. On the contrary – the fact that respondent and her husband are well-educated professionals, coupled with the relatively low value of the merchandise respondent stole, suggests that her thefts were not prompted by financial need. And while "stress" may contribute to respondent's conduct, as she and her husband believe, the evidence fails to establish any good reason to believe that respondent will react differently to stress in the future. At this time, therefore, it would be contrary to the public interest to allow respondent to retain her license, even on a restricted basis.

ORDER

All licenses and licensing rights of respondent Li Li under the Real Estate Law are
revoked.

DATED: December 12, 2005



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
JUL 13 2005

DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-9317 SF
12 LI LI,) ACCUSATION
13 Respondent.)
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15 The Complainant, E. J. Haberer II, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 Accusation against LI LI (hereinafter "Respondent"), is informed
18 and alleges as follows:

19 I

20 The Complainant, E. J. Haberer II, a Deputy Real
21 Estate Commissioner of the State of California, makes this
22 Accusation in his official capacity.

23 II

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

1 III

2 The restricted real estate salesperson license was
3 issued to Respondent on July 21, 2004 as a result of Case No.
4 8663 SF and was issued subject to the conditions.

5 Included in said terms, conditions and restrictions
6 were the following:

- 7 1. The restricted license issued to respondent may
8 be suspended prior to hearing by Order of the Real
9 Estate Commissioner in the event of respondent's
10 conviction or plea of nolo contendere to a crime which
11 is substantially related to respondent's fitness or
12 capacity as a real estate licensee.

13 IV

14 On or about January 13, 2005, in the Superior Court of
15 California, County of Santa Clara, Respondent was convicted of
16 violation of California Penal Code Section 484/488 (Petty
17 Theft), a crime involving moral turpitude and/or which is
18 substantially related under Section 2910, Title 10, California
19 Code of Regulations (herein after the "Regulations") to the
20 qualifications, functions or duties of a real estate licensee.

21 V

22 The facts alleged above constitute cause under
23 Section 10177(k) of the Code for suspension or revocation of all
24 licenses and license rights of Respondent under the Real Estate
25 Law.

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1 VI

2 The facts alleged above constitute cause under
3 Sections 490 and 10177(b) of the Code for suspension or
4 revocation of all licenses and license rights of Respondent
5 under the Real Estate Law.

6 WHEREFORE, Complainant prays that a hearing be
7 conducted on the allegations of this Accusation and that upon
8 proof thereof, a decision be rendered imposing disciplinary
9 action against all licenses and license rights of Respondents
10 under the Real Estate Law (Part 1 of Division 4 of the Business
11 and Professions Code) and for such other and further relief as
12 may be proper under other provisions of law.

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14 
15 E. J. HABERER II
16 Deputy Real Estate Commissioner

17 Dated at Oakland, California,
18 this 11 day of July, 2005.
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