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BUREAU OF REAL ESTATE

By [signature]

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of	)	CalBRE No. H-12023 SF
MING SHAO,	)	OAH No. 2016120346
Respondent.	)	

DECISION

The Proposed Decision dated May 9, 2017, 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 Application for a Real Estate Salesperson License is denied, but the right to a Restricted Real Estate Salesperson License is granted to Respondent.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

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If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on JUN 30 2017.

IT IS SO ORDERED 6/9/17.

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of: MING SHAO, Respondent.	No. H-12023 SF OAH No. 2016120346

PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California, heard this matter on April 10, 2017, in Oakland, California.

Counsel Kyle T. Jones, Legal Division, Bureau of Real Estate, represented complainant Robin S. Tanner.

Mr. Frank R. Ubhaus, Esq., of Berliner Cohen LLP, Attorneys at Law, Ten Almaden Boulevard, 11th Fl., San Jose, California 95113-2233, represented respondent Ming Shao, who was present for the proceeding.

On April 10, 2017, the parties submitted the matter for decision, and the record closed.

FACTUAL FINDINGS

1. On November 18, 2016, complainant Robin S. Tanner, (complainant), in her official capacity as a Supervising Special Investigator, Bureau of Real Estate, State of California (the bureau), made the Statement of Issues against respondent Ming Shao (respondent).

2. On May 29, 2016, the bureau received respondent's application for a real estate salesperson license. Respondent had signed the application on May 16, 2016.

The application remains pending as the bureau has refused to issue a license to respondent due to her past acts and omissions that appear to disqualify her for licensure.

Record of Criminal Conviction

3. On February 24, 2011, under Case No. CR10 00748, in the United States District Court, Northern District of California, San Jose Division, pursuant to a guilty plea, respondent was convicted of violating title 18 United States Code section 1030, subdivision (a)(2), (computer intrusion), a felony.

4. The facts and circumstances of respondent's felony offense arose out of events relating to respondent's past employment with PanTerra Networks, Inc. (PanTerra), which has facilities in Sunnyvale, California. In essence, from September 2009 through March 2010, respondent accessed the email accounts of two employees of her former employer. From those email accounts, respondent secured sensitive information about the corporation's senior management, including the business's proprietary information set out in PanTerra's "Weekly Operations Report." Her former employer became aware of respondent's conduct after she posted the contents of two unflattering email messages onto two industry Internet forums, where she used the title "bad CEO of the year" for the postings in describing her former immediate supervisor. Respondent's acts caused PanTerra to expend considerable sums of money to trace the supposed cyber intrusion and to shore up its digital security systems. Moreover, when the Federal Bureau of Investigation (FBI) conducted an investigation and traveled to respondent's residence in accordance with the execution of a search warrant, respondent attempted to conceal evidence relating to her intrusion into the digital network of PanTerra.

5. As a consequence of the conviction, the federal court placed respondent on a one-year term of probation. Also, the federal court ordered her to pay $20,747 as restitution to PanTerra. And, the United States District Court for Northern California ordered respondent to pay an assessment and a fine in a total amount of $2,100.

Matters in Extenuation

6. For a two-year period, respondent worked for PanTerra, a small start-up company in the Silicon Valley with significant operations in India. Although she held the title of Director of Marketing for the corporation, respondent served in many capacities such as product marketing, product management through frequent contact with company operatives in India, sales support, and general communications. Her immediate supervisor was the company CEO. She worked long hours and cared deeply about the company. A new CEO assumed ultimate control of the company shortly after respondent had begun her job. Respondent encountered considerable conflicts with the new CEO, and she found him to be hostile and abusive to many employees at the workplace, and, in her view, to perform poorly in his corporate role. Among other things, respondent witnessed the CEO give incorrect information to the company's Board of Directors. Also, the CEO directed respondent to engage in activities for which she raised objections, including her opposition to the CEO telling her to send

false financial information to the company's board. And, the CEO asked respondent to engage in other unethical acts such as to misappropriate other businesses' corporate documents, namely user or licensing agreements as developed by such companies as Google and Yahoo. Towards the end of her career with PanTerra, respondent and the CEO engaged in an angry exchange regarding the CEO's desire to terminate the employment of the then senior salesperson with the company.

Due to great strain between them, the CEO caused respondent to be terminated from the company's employment in July 2009. (Despite being unjustly fired from her senior management position, respondent generously provided assistance to her replacement without compensation.)

After the termination of her employment, respondent began accessing the email accounts of two employees of the company, starting in September 2009. Respondent stated that she was "curious" about how things were going at the company because she cared about the company and her former colleagues. (Respondent was credible when she denied being motivated by reaping financial gain from the corporation itself.)

Respondent accessed the two email accounts about twice a week over the period of about six months. In March 2010, respondent discovered two emails that were upsetting to her. One email revealed the mistreatment of the family of a consultant who had died unexpectedly. The other email revealed that the CEO had ordered someone to lie to a customer. Respondent anonymously posted the two emails on an Internet forum.

When respondent accessed the private email system of the company from which her employment had been terminated, she was upset and disgusted with the management style of the new CEO. The posting of two emails on an Internet forum page involved her sense of seeking retribution against the immoral disposition of the corporation's management. Moreover, respondent was upset by the death of the consultant and by the actions of the CEO.

In a statement addressed to the bureau explaining her crime, respondent detailed what she called "two long years of stress" at her former company. Respondent wrote about the obnoxious and hostile workplace and of being ignored by and yelled at by the CEO. She detailed acts of dishonesty and incompetence committed by the CEO. Respondent conveyed that she felt "betrayed" at her termination and suffered "extreme disappointment and embarrassment" at being fired. And, she acknowledged that at the time she "didn't think rationally."

7. With regret, respondent looks back at her acts, which she now views as illogical and without direction. She now realizes that she should never have accessed the email accounts assigned to other employees of her former employer.

8. Respondent poignantly testified that her mistreatment by the CEO did not excuse her conduct.

Respondent's Background and Matters in Mitigation

9. In 1988, respondent graduated from the Beijing University of Posts and Telecommunications (China) with the equivalent of a bachelor's of science degree in computer engineering. (She had graduated from high school in 1982. And, she attended two years of technical school before she enrolled in the university.)

In 1997, respondent received a scholarship to study at Coventry University in England, United Kingdom. She received a master's degree in management from Coventry University in 1998.

10. Respondent worked for China Telecom for nine years until she accepted a scholarship to study at Coventry University. For China Telecom, she worked first in the Engineering Division and then she worked in the Operations Management division of the Chinese company.

After graduating from Coventry University, respondent worked for one year in Stockholm, Sweden for the Ericsson Corporation, a multinational networking and telecommunications equipment company. She was a marketing manager for Ericsson.

In 1999, along with her young son, respondent immigrated to the United States to work for telecommunications company call Inter-Tel. (At the time of her emigration, respondent was separated from her husband; and after she had established her residence in this county, her divorce was finalized.) Following employment with Inter-Tel, she worked for another telecommunications company called Teligent. Respondent then worked for a series of companies, namely Mockingbird Networks, Enpower-Tel Networks, Covad Company, and Open Wave Systems.

PanTerra hired respondent on August 8, 2007.

11. Respondent was employed for 25 years in product marketing in the technology industry. She has been an active volunteer in various professional organizations throughout her career.

12. In 2008, respondent became a citizen of the United States of America.

13. Respondent is a single mother of a college graduate. When she was being prosecuted for the federal offense for which she was convicted in February 2011, her son was an 18-year-old student at UC Berkeley.

Matters that Negatively Impact Upon Respondent's Progress towards Rehabilitation

14. For the hearing in this matter, respondent did not provide documentary proof that in the immediate past she has had significant or conscientious involvement in community, religious or privately sponsored programs designed to provide social benefits or to ameliorate social problems. (In February 2013 when she attended an administrative adjudication proceeding that dealt with the bureau's denial of her first application for licensure, respondent gave extensive testimony regarding her active involvement in her church community. She had taught Sunday school classes to third-graders and regularly volunteered at church events. And, her past testimony revealed that in the past, respondent volunteered for such non-profit organizations as: Save the Bay, Mission in Music, and One Million Lights organizations.)

15. At the hearing of this matter, respondent called no witnesses. No person appeared on respondent's behalf to offer evidence pertaining to respondent's reputation in her community for honesty and integrity. No person came to the hearing of this matter to describe respondent's attitude towards her past criminal actions that led to the convictions mentioned above. (But, during the hearing in February 2013, respondent called three witnesses, and she presented a couple of letters from admirers. Those witnesses and letter writers praised respondent's strength of good character, remorse, involvement in charitable activities, and impressive accomplishments during her lengthy working career.)

Matters in Rehabilitation

16. Respondent is 51 years old. She is an intelligent and very contrite individual, who projects a state of great regret and anguish for her impetuous acts of retribution towards her former employer.

17. Respondent acknowledged committing the offense. At the hearing of this matter, she expressed deep remorse for her actions.

18. Respondent's felony conviction in the federal court occurred more than five years before the date of the Statement of Issues as filed by complainant against respondent. And, measured against the date of the hearing in this matter, her conviction occurred six years, two months in the past.

19. Respondent's one-year term of probation ended on February 23, 2012.

20. As to the federal court's order that she make restitution to the purported crime victim in the amount of $20,747, respondent paid the entire amount during the year 2011.

Also, respondent paid the federal court's assessment and fine of $2,100 by mid-November 2015.

21. After the February 2011 conviction date, respondent attended psychotherapy sessions for one year with a clinic called Pathways. The sessions helped her learn how to deal with abusive people and how to manage her emotional stress. In addition, respondent interacted on a "few dates" with a private therapist.

Respondent poignantly and credibly proclaimed at the hearing of this matter that she has "learned how to deal with stressful situations [that may develop in the future in] a more productive and non-self-destructive way."

22. From 2011 to 2012, respondent attended the UC Santa Cruz Extension Program for a course of study called "Program Management." She secured a certificate of completion for the course in 2012, which occurred after her federal court felony conviction.

23. Due to the felony conviction in federal court, respondent has encountered great obstacles in gaining employment in telecommunications or as an operative within a large corporation. From 2011 until 2014, at most respondent secured short-term "consultancy" jobs in her field of expertise.

In July 2014, however, respondent was hired, on a commission basis, to make door-to-door sales for a company called American Solar Direct. She left that company in August 2015, although she had attained recognition as the most productive local salesperson.

24. In approximately February 2015, the California Contractors State License Board (CSLB) issued respondent a Home Improvement Sales license on a probationary basis for a four-year period. But, respondent has not been compelled to meet with a probation monitor of the CSLB since the license was issued to her.

25. After the CSLB granted her a license, respondent was hired in August 2015 by Solar City, which is a large solar panel installation company. Her assignment for Solar City, as a retail consultant, enabled respondent to work within booths situated in retail shopping malls. In September 2015, she was promoted to a supervising manager for Solar City, which installs solar panels onto roofs.

On August 1, 2016, respondent was hired to work for SunRun, which is another company that installs solar panels. She holds a title of Field Energy Consultant. Respondent works no less than six days per week. Hence, she works more than 12 hours each work day.

26. Respondent has personal stability by reason of her family life that involves her 25-year-old son, who resides at respondent's house in the City of Alameda. With respondent's support and encouragement, her son graduated from U.C. Berkeley in 2013 with a degree in Bioengineering. Her son is now employed in software engineering with LinkedIn Corporation at that company's San Francisco campus.

27. Respondent has the support and respect of various individuals where she lives and works. She offered three letters[1] by persons who endorsed her licensure as a real estate professional. Each letter, however, bears a date around mid-August 2012, and were offered at her past administrative hearing as held in February 2013.

28. Respondent has formulated a changed attitude from the time of her past criminal act to the present time of maturity and stability of thought, which shield her from engaging in the type of misbehavior and criminal conduct that led to her felony conviction in the federal court.

Ultimate Finding

29. The weight of the evidence supports the determination that it would not be against the public interest for the bureau to issue respondent a real estate salesperson license on a restricted basis for a period of two years.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that the bureau may deny a license on the ground that the applicant has "been convicted of a crime . . . [that] . . . is substantially related to the qualifications, functions or duties of the business . . . for which (an) application is made."

Business and Professions Code section 10177, subdivision (b), establishes that the bureau may deny the issuance of a license to an applicant who 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 . . . ."

2. Criteria for substantial relationship between respondent's federal felony conviction for computer intrusion with the qualifications, functions, or duties of a real

[1] A letter, dated August 17, 2012, by Walter Snell, CEO, Telivo Managed Services; a letter, dated August 9, 2012, by Glenn F. Coffman; a letter, dated August 5, 2012, by Bertina Chang.

estate licensee are grounded in California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (a)(4) and (a)(8).

California Code of Regulations, title 10, section 2910, subdivision (a)(1), sets forth a criterion for substantial relationship as: "The fraudulent taking, obtaining, appropriating or retaining of funds *or property* belonging to another person." (Emphasis added.) Without authorization, respondent accessed the private email accounts of employees with the corporation from which respondent had been terminated. The value of repairing the cyber damage caused to the crime victim by respondent's act reached an amount in excess of $20,745. Respondent took, obtained or appropriated information in the email accounts and posted the information for viewing through an Internet site. Although she had no goal of financially benefitting from her act as opposed to causing harm or embarrassment to the corporation's CEO, respondent's acts were unlawful.

California Code of Regulations, title 10, section 2910, subdivision (a)(4), provides a criterion for substantial relationship as: "the employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end." At very least, respondent's stealth in gaining sensitive information of a corporation involved a form of deceit by using email accounts for which she was not authorized to access. In her quest to obtain embarrassing information against the PanTerra CEO, who had been responsible for the loss of respondent's employment, respondent used a form of deceit to achieve the end desired by her.

California Code of Regulations, title 10, section 2910, subdivision (a)(8), prescribes a criterion for substantial relationship as: "doing of any unlawful act with . . . the threat of doing substantial injury to the person or property of another." When respondent viewed email accounts to which she was not authorized and then took secret corporate information for the purpose of shedding a bad light on the corporation and its CEO, her conduct involved a threat of injury to the person or property of others.

3. Cause exists to deny licensure to respondent under Business and Professions Code section 10177, subdivision (b), together with Code section 480, subdivision (a), by reason of the matters set forth in Factual Finding 3, along with Legal Conclusions 1 and 2.

4. The matters in extenuation, respondent's background, matters in mitigation, and the matters in rehabilitation as set forth in Factual Findings 6 through 13, and 16 through 28, have been considered in making the Order below.

5. The bureau has developed 14 criteria to be used to evaluate rehabilitation of an applicant for a license who has committed a crime. (Cal.Code Regs., tit. 10, § 2911.) These criteria attempt to gauge whether the applicant has changed so that a repeat of her criminal behavior is unlikely. Of the many criteria, arguably the most

important in predicting future conduct is section 2911, subdivision (n): "[c]hange in attitude from that which existed at the time of the conduct in question." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 148–49.)

As prescribed by California Code of Regulations, title 10, section 2911, respondent has been successful in attaining the constellation of positive attributes in accordance with the bureau's criteria for rehabilitation from the record of her single federal court conviction. And, it is clear that she has fostered a change in attitude from her mind-set in 2011 when she committed her felony offense.

ORDER

Respondent Ming Shao's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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 this restricted license.

Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Bureau of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

DATED: May 9, 2017

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PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings