

DEPARTMENT OF REAL ESTATE

Sandra B. Stone

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L-2004090335

**BY: John R. Liberator**  
**Chief Deputy Commissioner**

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LIDIJA B. BACELIC,

Respondent.

Board No. H- 31077 LA

OAH No. L2004090335

**PROPOSED DECISION**

This matter came was heard on February 8, 2005, at Los Angeles, California, by Christopher J. Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California.

Respondent Lidija B. Bacelic (Respondent) was present and was represented by Isaac R. Zfaty, Esq.

Maria Suarez, Deputy Real Estate Commissioner (Complainant), was represented by Kelvin K. Lee, Counsel for Department of Real Estate (Department).

Oral and documentary evidence was received and the matter was argued. The record was held open until March 11, 2005, in order for the parties to submit closing briefs. On March 11, 2005, Respondent's closing brief was received and marked as Exhibit C. On March 11, 2005, Complainant's closing brief was received and marked as Exhibit 7. The matter was then submitted for decision on March 12, 2005.

**FACTUAL FINDINGS**

1. The Complainant brought the Accusation in her official capacity.
2. Respondent is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code), as a real estate salesperson. Respondent was initially licensed in 1989.
3. On or about October 3, 2002, in the Superior Court of California, County of Los Angeles, Case No. 2WL02609, Respondent was convicted, on her plea of nolo contendere, of violating Penal Code section 484, subdivision (a)(Petty Theft), a misdemeanor. Respondent was sentenced to 36 months summary probation (until October 3, 2005) and was ordered to pay fines and restitution in the amount of \$434. Respondent paid the \$434.

4. The underlying events leading to the conviction, according to Respondent, began when Respondent, her husband, and their two daughters went to Bloomingdale's. Respondent's husband took a tag off a marked pair of pants and placed it on the unmarked pair he wanted to buy. The pants were the same style according to Respondent's husband. Respondent's husband handed her the pants, without discussing the price tag issue, and Respondent was stopped and arrested after she made the purchase. Respondent's criminal attorney told her to plead nolo contendere. Respondent did not want to risk 30 days in jail if she went to trial. She contends she did nothing wrong. The undersigned found Respondent's explanation of events possible, but difficult to believe.

5. Respondent's claims of innocence are not persuasive. The issue of Respondent's guilt may not be re-litigated. Respondent's entry of the plea of nolo contendere in her criminal case is conclusive evidence of guilt upon which the administrative law judge must rely. *Arneson v. Fox* (1980) 28 Cal.3d 440.

6. Exhibit 4 is the police report. Both parties briefed the issue of whether the store security persons' written statements given to the police officer, and attached to the police officer's report, are admissible. The undersigned concludes that the store security officer's statements (labeled SIS Data Entry) are inadmissible hearsay. Therefore, the only evidence, albeit not credible, of the underlying events leading to the conviction is Respondent's. However, the elements of Penal Code section 484, subdivision (a), establish that this is a crime of moral turpitude.

7. In mitigation, Respondent has never had any complaints or prior discipline against her license. She is a very successful agent and her broker testified that she has worked for him for 16 years and that she is a great employee. At the hearing, Respondent did appear to appreciate the gravity of the situation. That is, that her license could be revoked. The chance of recidivism in this case appears unlikely. Respondent has a stable family life with her husband and two daughters. She is involved at her children's school. Her clientele is mostly return clients or referral clients which indicates that she is a well-regarded real estate agent. Based on the evidence presented, Respondent does not appear to pose a risk to the public.

### **LEGAL CONCLUSIONS AND DISCUSSION**

1. Cause exists to suspend or revoke Respondent's real estate broker license pursuant to Business and Professions Code section 490 because Respondent has been convicted of a crime which is substantially related to the qualifications, functions, or duties of a real estate salesperson.

#### **Substantial Relationship**

California Code of Regulations, title 10, section 2910, defines by regulation instances where acts are deemed to be substantially related to the qualifications, functions, or duties of

a licensee. Under subsections (a)(1), and (a)(8), Respondent's act of theft is substantially related to the qualifications, functions, or duties of a licensee. Factual Findings 1-5.

2. Cause exists to suspend or revoke Respondent's real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b), based on Respondent's conviction. Respondent's conviction for theft rises to the level of a crime involving moral turpitude. Factual Findings 1-5.

3. Criteria have been developed by the Department pursuant to section 482, subdivision (a), of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding has been initiated on account of a crime committed by the licensee. These criteria, found at California Code of Regulations, title 10, section 2911, are summarized as follows:

- Subsection(a) passage of at least two years since the conviction;
- Subsection(b) restitution;
- Subsection(c) expungement of the conviction;
- Subsection(d) expungement of the requirement to register as an offender;
- Subsection(e) completion of the criminal probation;
- Subsection(f) abstinence from drugs or alcohol that contributed to the crime;
- Subsection(g) payment of any criminal fines or penalties;
- Subsection(h) stability of family life;
- Subsection(i) enrollment in or completion of educational or training courses;
- Subsection(j) discharge of debts to others;
- Subsection(k) correction of business practices causing injury;
- Subsection(l) significant involvement in community, church or private programs for social betterment
- Subsection(m) new and different social and business relationships; and
- Subsection(n) change in attitude from the time of conviction to the present, evidenced by testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns.

4. Respondent has presented sufficient evidence of rehabilitation to justify a restricted license. Her conviction is over two years old and her probation will be complete in approximately 6 months. She has paid the fines and restitution. Respondent has a stable family life with her husband and two daughters. She is involved at her childrens' school. She is a well-regarded real estate agent. Based on the evidence presented, Respondent does not pose a risk to the public.

### ORDER

All licenses and licensing rights of Respondent LIDIJA B. BACELIC under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor 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 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 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 nor 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:

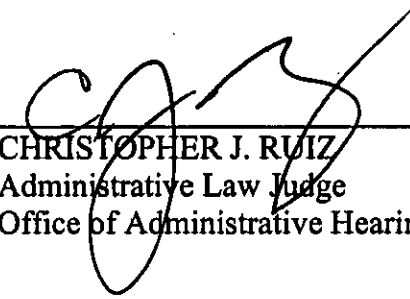
(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(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 renewal 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 the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

DATED: March 8, 2005.

  
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CHRISTOPHER J. RUIZ  
Administrative Law Judge  
Office of Administrative Hearings

5/10/10

**BEFORE THE DEPARTMENT OF REAL ESTATE**  
**STATE OF CALIFORNIA**

In the Matter of the Accusation of )  
LIDIJA B. BACELIC, )  
\_\_\_\_\_) )  
Respondent )

Case No. H-31077 LA

OAH No. L-2004090335

**FILED**  
DEC 28 2004  
DEPARTMENT OF REAL ESTATE

**NOTICE OF CONTINUED HEARING ON ACCUSATION**

**To the above-named Respondent(s):**

**You are hereby notified** that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on TUESDAY, FEBRUARY 8, 2005, at the hour of 10:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: December 28, 2004

By

Kelvin Lee  
KELVIN LEE, Counsel

cc: Lidija B. Bacelic  
Franz Dittrich Inc.  
Sacto.  
OAH

RE 501 (Rev. 8/97)

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**BEFORE THE DEPARTMENT OF REAL ESTATE**  
**STATE OF CALIFORNIA**

In the Matter of the Accusation of )  
LIDIJA B. BACELIC, )  
Respondent. )

Case No. H-31077 LA  
OAH No. L-2004090335

**FILED**  
SEP 27 2004  
DEPARTMENT OF REAL ESTATE

**NOTICE OF HEARING ON ACCUSATION**

By 

**To the above-named Respondent(s):**

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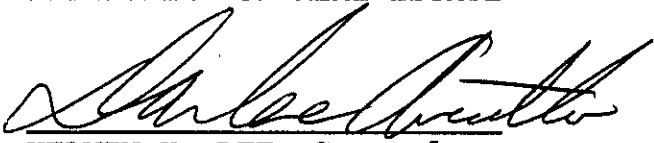
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DEPARTMENT OF REAL ESTATE

Dated: September 27, 2004

By

  
KELVIN K. LEE, Counsel

cc: Lidija B. Bacelic  
Franz Dittrich Inc.  
Sacto.  
OAH



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KELVIN K. LEE, Counsel (SBN 152867)  
Department of Real Estate  
320 West 4th Street, Suite 350  
Los Angeles, California 90013-1105

Telephone: (213) 576-6982  
(Direct) (213) 576-6905

**FILED**  
JUL 16 2004  
DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of ) No. H-31077 LA  
)  
LIDIJA B. BACELIC, ) A C C U S A T I O N  
)  
Respondent. )

The Complainant, Maria Suarez, a Deputy Real Estate  
Commissioner of the State of California, for cause of Accusation  
against LIDIJA B. BACELIC ("Respondent") alleges as follows:

I

The Complainant, Maria Suarez, a Deputy Real Estate  
Commissioner of the State of California, makes this Accusation  
in her official capacity.

II

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

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III

On or about October 3, 2002, in the Superior Court of California, County of Los Angeles, Respondent LIDIJA B. BACELIC, was convicted of one (1) count of violating Section 484, subdivision (a) of the California Penal Code (Petty Theft). This crime involves moral turpitude, and 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.

IV

The crime of which Respondent was convicted, as described in paragraph III above, constitutes cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of the license and license rights of Respondent under the Real Estate Law.

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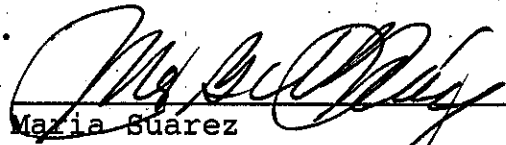
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1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all the licenses and license rights of  
5 Respondent,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

9 Dated at Los Angeles, California

10 this 6th day of July, 2004.

11   
12 Maria Suarez  
13 Deputy Real Estate Commissioner

14 cc: LIDIJA B. BACELIC  
15 Franz Dittrich/Franz Dittrich Inc.  
16 Maria Suarez  
17 Sacto.  
18 CW  
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