

1 the requirements of law for the issuance to Respondent of
2 an unrestricted real estate salesperson license and that
3 it would not be against the public interest to issue said
4 license to Respondent.

5 NOW, THEREFORE, IT IS ORDERED that Respondent's
6 petition for reinstatement is granted and that a real estate
7 salesperson license be issued to Respondent, if Respondent
8 satisfies the following conditions within nine (9) months
9 from the date of this Order:

10 1. Submittal of a completed application and payment
11 of the fee for a real estate salesperson license.

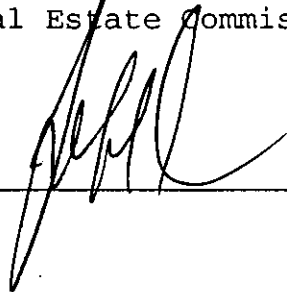
12 2. Submittal of evidence of having, since the most
13 recent issuance of an original or renewal real estate license,
14 taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate
16 Law for renewal of a real estate license.

17 This Order shall be effective immediately.

18 Dated: 10-1-08

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20 JEFF DAVI
Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

XI QIAO,

Respondent.

Case No. H-31482 LA

OAH No. L2004120156

PROPOSED DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on March 11, 2005.

Darlene Averetta, Staff Counsel, represented Complainant Maria Suarez, Deputy Real Estate Commissioner.

Rene A. Ramos, Attorney at Law, represented Respondent Xi Qiao (hereinafter Respondent).

Oral and documentary evidence was taken and the matter was submitted on March 11, 2005.

FACTUAL FINDINGS

1. Maria Suarez (Complainant) made the Accusation solely in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate (Department), State of California.
2. On October 3, 2001, Respondent was issued real estate salesperson's license number 01320206. Respondent is presently licensed and has license rights until October 2, 2005, unless revoked pursuant to these proceedings.
3. On March 18, 2004, in the Superior Court of California, Beverly Hills Division, county of Los Angeles, Respondent was convicted on her plea of nolo contendere to one count of theft of personal property, in violation of Penal Code section 484, subdivision (a), a misdemeanor and a crime involving moral turpitude that is substantially related to the qualifications, functions and duties of a real estate salesperson. Imposition of sentence was suspended and Respondent was placed on summary probation for a period of 24 months, ordered to perform 40 hours of community service, and to pay fines, fees and restitution in

the amount of \$880.00. Respondent paid all of the fines, penalties, and restitution ordered by the court and completed her 40 hours of community service. On March 4, 2005, Respondent's conviction was expunged pursuant to Penal Code section 1203.4 and her probation was terminated early by the court.

4. The facts and circumstances surrounding Respondent's conviction are that on December 27, 2003, Respondent entered Saks Fifth Avenue in Beverly Hills and attempted to take merchandise without paying for it, to wit, shoplifting. Respondent attempted to shoplift a woman's handbag and blouse valued in excess of \$2,500.00 retail. Respondent was initially charged with grand theft property, but as a result of the plea bargain, was convicted of misdemeanor theft of property.

5. Respondent is 35 years old and divorced, with no children. She was born in China and came to the United States in 1996. She attended the Fashion and Design Institute where she obtained an Associates of Arts degree in 2000, with a major in design and merchandising. In December 2001, Respondent began working with Coldwell Banker Realty in Arcadia, California, as a real estate salesperson. Respondent has supported herself since that time by selling real estate and owns her home. She rents a room out to a friend to help pay her mortgage.

6. Respondent has no immediate family in the United States, as her father currently resides in China, and her mother died in China in November 2003, one month before the shoplifting incident that resulted in her March 2004 conviction. Respondent testified that, in December 2003, right after Christmas, she went into Saks Fifth Avenue and stole the blouse and handbag. Although taking full responsibility for her conduct, Respondent explained that towards the end of 2003, she was extremely depressed and was experiencing a very difficult time in her life. She stated that her mother had just died in China and she was having difficulty in her marriage because her husband was involved with another woman. Respondent's divorce from her husband became final in October 2004. The combination of these events contributed to Respondent becoming severely depressed.

7. Respondent's depression and stress significantly contributed to her committing the shoplifting offense. Respondent admitted her unlawful conduct and stated she was embarrassed and ashamed for her conduct. Respondent's testimony was forthright and credible and her expressions of remorse were genuine.

8. Respondent continues to work for Coldwell Banker as a real estate salesperson and her employer is aware of her conviction. She states that she will be allowed to remain employed with Coldwell Banker if she is allowed to retain her license. Respondent did not notify Coldwell Banker about her conviction until after the Department sent letters to her employer informing them of her conviction. Respondent explained that she was afraid she would lose her job if she told her employer about the conviction when it occurred.

9. Respondent is a practicing Buddhist and attends temple often. She has relied on her religion and the temple to help her through this incident. Respondent donates to

causes in Cambodia and Vietnam through her temple. She testified that she enjoys helping people purchase their first homes, particularly Chinese immigrants who may not be familiar with the real estate market.

10. Respondent has no other convictions on her record and has no other license disciplinary actions on her record either before or after the March 2004 conviction.

11. Under the Department of Real Estate regulations, California Code of Regulations, Title 10, Chapter 6, Article 18.5, section 2912, when considering whether to revoke or suspend a licensee, the following criteria for rehabilitation, in pertinent part, should be considered:

(a) Whether there has been a 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. Respondent's conviction occurred in March 2004, just over one year ago. Thus, two full years have not elapsed since Respondent's conviction.

(b) Payment of restitution to any person who has suffered monetary losses through acts or omissions of the licensee. Respondent has paid the restitution ordered by the court.

(c) Expungement of the conviction which culminated in the administrative proceeding to take disciplinary action. Respondent's conviction was expunged in March 2004, one year after her conviction.

(e) Successful completion or early discharge from probation or parole. Respondent's probation was terminated early in March 2005.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the licensee. Respondent paid all fines and penalties ordered by the Court.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction. Respondent is now divorced and does not have significant family support as her immediate family ties are in China. Respondent's depression which contributed to her criminal conduct was caused by the death of her mother and her marital problems which ended in divorce. However, Respondent has been financially self-sufficient since her conviction and divorce and currently owns her own home. She appears to be adjusting well given the familial difficulties she experienced in 2003 and 2004.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement. Respondent has completed her Associates of Arts Degree and continues to work as a licensed real estate salesperson for Coldwell Banker.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. Respondent is active in her Buddhist faith and contributes through her temple to several Asian assistance programs.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in questions. Respondent testified honestly and sincerely about the shoplifting offense. She appeared genuinely remorseful for her unlawful conduct. There is insufficient evidence to conclude that Respondent is likely to repeat such an offense or any other unlawful or dishonest act or omission. Respondent is coping with her stress and depression caused by her mother's death and her divorce, and seems to be ready to continue what has been a successful career as a real estate salesperson.

12. On balance, Respondent has satisfied most of the criteria for rehabilitation under the Department's regulations, and there is insufficient evidence to conclude that Respondent would pose a threat to the public's interest if allowed to retain her real estate salesperson's license. However, because Respondent's conviction occurred within the last two years, she has just recently terminated her probation, and may still be vulnerable to stress and depression, restricted salesperson's license is required at this time.

LEGAL CONCLUSIONS

1. Cause exist to revoke Respondent's real estate salesperson's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), in that she was convicted of a crime involving moral turpitude that is substantially related to the qualifications, functions and duties of a licensee, by reason of Factual Findings 3 and 4.

2. Although cause exists to suspend or revoke Respondent's license, in view of the matters set forth in Factual Findings 5 through 12, this is an appropriate case in which to stay the disciplinary action and allow the Respondent to have a restricted license, in accordance with certain specified terms, conditions and restrictions, as set forth in the order below.

ORDER

All licenses and licensing rights of Respondent Qiao Xi 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 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 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.

DATED: April 10, 2005


MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
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 XI QIAO,)
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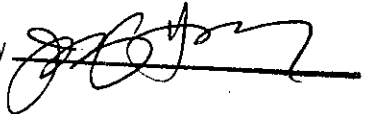
Case No. H-31482 LA
OAH No. L-2004120156

Respondent.

FILED
JAN 12 2005

DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

By 

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 FRIDAY, MARCH 11, 2005, at the hour of 9:00 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: January 12, 2005

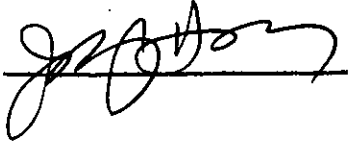
By 
SHANNON CHAMBERS, Counsel

cc: Xi Qiao
Coldwell Banker Residential Brokerage Co.
Sacto.
OAH

1 SHANNON M. CHAMBERS, Counsel (SBN 212459)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6916

FILED
NOV 12 2004
DEPARTMENT OF REAL ESTATE

By 

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of) No. H-31482 LA
11 XI QIAO) A C C U S A T I O N
12 Respondent.)
13 _____)

14 The Complainant, Maria Suarez, a Deputy Real Estate
15 Commissioner of the State of California, for cause of Accusation
16 against XI QIAO, aka Tracy Qiao ("Respondent") alleges as
17 follows:

18 I

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

22 II

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

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III

1 On or about March 18, 2004, in the Superior Court of
2 California, Beverly Hills Division, County of Los Angeles,
3 State of California, in Case No. 3BH01920, Respondent XI QIAO,
4 aka Tracy Qiao, was convicted of one (1) count of violating
5 Section 484(A) of the California Penal Code (Theft of Property).
6 This is a crime involving moral turpitude which bears a
7 substantial relationship under Section 2910, Title 10, Chapter
8 6, California Code of Regulations to the qualifications,
9 functions or duties of a real estate licensee.
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IV

11 The crime of which Respondent was convicted, as
12 described in Paragraph III above, constitutes cause under
13 Sections 490 and 10177(b) of the Code for the suspension or
14 revocation of the license and license rights of Respondent under
15 the Real Estate Law.
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2 WHEREFORE, Complainant prays that a hearing be
3 conducted on the allegations of this Accusation and that upon
4 proof thereof, a decision be rendered imposing disciplinary
5 action against all the licenses and license rights of
6 Respondent, XI QIAO, under the Real Estate Law (Part 1 of
7 Division 4 of the Business and Professions Code) and for such
8 other and further relief as may be proper under other applicable
9 provisions of law.

10 Dated at Los Angeles, California

11 this 9th day of November, 2004.

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13 _____
14 Maria Suarez
15 Deputy Real Estate Commissioner

14 cc: XI QIAO
15 Coldwell Banker Residential Brokerage Company
16 Maria Suarez
17 Sacto.
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