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FILED

JAN 14 2013

DEPARTMENT OF REAL ESTATE
BY: *R. Hederholt*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of

CHENG TSUNG LIN,

Respondent.

No. H-34308 LA

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

On April 23, 2008, an Order revoking Respondent's real estate salesperson license was rendered based on Respondent's conviction of grand theft in 2006.

On August 4, 2010, Respondent petitioned for reinstatement of Respondent's real estate salesperson license.

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 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate salesperson license, in that:

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1 I

2 In 2006, Respondent was convicted of grand theft. Said crime is substantially
3 related to the functions, qualifications and duties of a real estate licensee pursuant to Section
4 2910, Title 10, Chapter 6, California Code of Regulations ("Regulations").

5 II

6 In the Decision which revoked Respondent's real estate license there were
7 Determination of Issues made that there was cause to revoke Respondent's real estate license
8 pursuant to Business and Professions Code ("Code") Sections 490 and 10177(b).

9 III

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

14 The Department has developed criteria in Regulation 2911 to assist in evaluating
15 the rehabilitation of an applicant for reinstatement of a license. Among the criteria relevant in
16 this proceeding are:

17 Regulation 2911(l) – Significant or conscientious involvement in community,
18 church or privately-sponsored programs designed to provide social benefits or to ameliorate
19 social problems

20 Respondent has not provided such proof.

21 2911(n)(2-4) – Change in attitude as evidenced by the testimony of others

22 No letters of recommendation or evidence from others of a change in attitude was
23 provided by Respondent.

24 Given the violations found and the fact that Respondent has not established that
25 Respondent has complied with Regulations 2911(l) and 2911(n)(2-4), I am not satisfied that
26 Respondent is sufficiently rehabilitated to receive a real estate salesperson license.

27 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for

1 reinstatement of Respondent's real estate salesperson license is denied.

2 I am satisfied, however, that it will not be against the public interest to issue a
3 restricted real estate salesperson license to Respondent.

4 A restricted real estate salesperson license shall be issued to Respondent pursuant
5 to Code Section 10156.5 if Respondent within twelve (12) months from the date hereof
6 providing Respondent:

7 (a) qualifies for, takes and passes the written examination required to obtain a real
8 estate salesperson license;

9 (b) makes application and pays the appropriate fee for said license;

10 1. The restricted license issued to Respondent shall be subject to all of the
11 provisions of Code Section 10156.7 and to the following limitations, conditions and restrictions
12 imposed under authority of Code Section 10156.6. The restricted license issued to Respondent
13 may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of
14 Respondent's conviction or plea of nolo contendere to a crime which is substantially related to
15 Respondent's fitness or capacity as a real estate licensee.

16 2. The restricted license issued to Respondent may be suspended prior to hearing
17 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
18 Respondent has violated provisions of the California Real Estate Law, Regulations of the Real
19 Estate Commissioner or conditions attaching to the restricted license.

20 3. Respondent shall not be eligible to apply for the issuance of an unrestricted
21 real estate license nor for the removal of any of the conditions, limitations or restrictions of a
22 restricted license until two (2) years have elapsed from the effective date of this Decision.

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

27 (a) That the employing broker has read the Decision of the Commissioner which

1 granted the right to a restricted license; and

2 (b) That the employing broker will exercise close supervision over the
3 performance by the restricted licensee relating to activities for which a real estate license is
4 required.

5 5. Respondent shall notify the Commissioner in writing within 72 hours of any
6 arrest be sending a certified letter to the Commissioner at the Department of Real Estate, Post
7 Office Box 187000, Sacramento, CA 95818-70-00. The letter shall set forth the date of
8 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
9 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
10 constitute an independent violation of the terms of the restricted license and shall be grounds for
11 the suspension or revocation of that license.

12 This Order shall become effective at 12 o'clock noon on FEB - 4 2013

13 IT IS SO ORDERED

14 10/11/2012
15 Real Estate Commissioner

16 [Signature]
17 By WAYNE S. BELL
18 Chief Counsel
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