

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
APR - 3 2008  
DEPARTMENT OF REAL ESTATE

\* \* \* \* \*

*Lawrence B. Olson*

In the Matter of the Accusation of ) No. H-34308 LA  
CHENG TSUNG LIN, ) 2007100875  
Respondent. )

DECISION

The Proposed Decision dated March 3, 2008, 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 APR 23 2008.

IT IS SO ORDERED 4.3-08.

JEFF DAVI  
Real Estate Commissioner

*Barbara J. Bigby*

BY: Barbara J. Bigby  
Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

CHENG TSUNG LIN,

Respondent.

Case No. H-34308 LA

OAH No. L2007100875

**PROPOSED DECISION**

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on January 31, 2008.

Martha J. Rosett, Counsel for the California Department of Real Estate (Department), represented Maria Suarez (Complainant).

Cheng Tsung Lin (Respondent) appeared and participated in the proceeding without the assistance of legal counsel.

Complainant seeks to discipline Respondent's real estate salesperson license based on his 2006 conviction for grand theft. Respondent seeks to mitigate the circumstances of the crime and establish that he has been rehabilitated. He has asked for "forgiveness" and a "second chance," so that he can service his clients and support his family.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 31, 2008.

**FACTUAL FINDINGS**

1. Complainant, a Deputy Real Estate Commissioner, filed the Accusation in her official capacity on September 18, 2007. Respondent filed a Notice of Defense on October 2, 2007, and this matter ensued.

2. Respondent is presently licensed as a real estate salesperson under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code<sup>1</sup>), and has held such license since September 1985. His license is due to expire on October 14, 2008. There is no record of prior discipline for this license.

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<sup>1</sup> All further statutory references are to the Business and Professions Code, unless specified otherwise.

3. Respondent immigrated to the United States from Taiwan approximately 29 years ago. Since 1983, he has been employed as a financial services representative and advisor to his clients. In this position, he helps clients to plan and purchase various investments and insurance products for their financial and investment portfolios.

4a. On June 12, 2006, in the Superior Court of California, County of Orange, in case number 06HF0313, Respondent was convicted, upon his plea of guilty, of violating Penal Code section 487, subdivision (a) (grand theft), a misdemeanor that involves dishonesty and moral turpitude. This crime is substantially related to the qualifications, functions and duties of a real estate licensee.

4b. Imposition of sentence was suspended and Respondent was placed on informal probation for three years under various terms and conditions including, incarceration for 120 days, which could be served under supervised electronic confinement, performance of 80 hours of community service, payment of fines and fees in the sum of \$120, and payment of \$8,000 to the Victim Witness Emergency fund. Respondent completed his incarceration, community service, and all court-ordered payments in less than eight months. He remains on probation until 2009.

4c. The facts and circumstances surrounding Respondent's conviction are as follows. Respondent was sick for several days leading up to Christmas 2005 and he was unable to purchase a gift for his wife. After he was feeling better, he wanted to buy her a gift. On December 27, 2005, Respondent went to the Louis Vuitton store in Costa Mesa, California, to buy her a purse. In the store, Respondent saw a lizard-skin briefcase on display which interested him. It did not have a price tag, so he picked it up and looked for a sales clerk to learn the price. The briefcase in fact was valued at \$5,700. The store was quite busy. Respondent walked around the sales floor carrying the briefcase for approximately 45 minutes, but no sales clerk offered to help him. He waited in line to reach the sales clerk for the purse counter. When he finally met with the sales clerk, he looked only at purses. He did not ask this sales clerk for the price of the briefcase.<sup>2</sup> He selected a purse and went to the cash register area. He paid \$1,045.18 for the purse with a credit card and filled out a customer service card with his name, address, telephone number, email address, and birth date. After he completed this purchase, he walked out of the store with the purse in a shopping bag and the unpaid-for briefcase, holding both of these in his left hand. When he arrived at his car, he put the shopping bag and the briefcase in the car's trunk. When he got home, he took the purse out of the trunk, but left the briefcase inside the trunk.

4d. Several weeks later, a detective from the Costa Mesa Police Department telephoned Respondent and asked about a briefcase he took from the Louis Vuitton store. Respondent denied taking a briefcase.

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<sup>2</sup> Respondent explained at the hearing that he was irritated about the long wait, exhausted, and tired: "I just wanted to get done and go home."

5a. In his testimony at the administrative hearing, Respondent said that when he left the Louis Vuitton store, he did not know he was carrying a briefcase for which had not paid. After his telephone conversation with the detective, he began pondering the events. He went to his trunk where he had left the briefcase and saw that it was not his own. He did not make further contact with the police or the Louis Vuitton store. In explaining how he had left the store with the briefcase, he said that "maybe" he had thought at the time that he was carrying his own briefcase, since it was customary for him to carry a briefcase. In explaining why he did not come forward after he realized he had taken the briefcase, Respondent said that he has been pursuing perfection "relentlessly" all of his life. Any mistake, in his view, was unforgivable, and he did not know how to face this situation. Instead of returning the briefcase to the store or the police, he hid it in a closet in his home. In March 2006, after he was arrested at his home, and while being transported to the police station, Respondent told the detectives where he had hidden the briefcase. They turned around, went back to his home, and retrieved it.

5b. According to the police report, Respondent admitted to detectives during the ride to the police station that the Louis Vuitton briefcase did not look like his own, and when he went to put the bag and briefcase in his trunk, he knew the briefcase was not his own. Although Respondent appeared sincere, his testimony was not consistent with the statement he made to the detectives, and it was not entirely believable, either. While it is possible that Respondent walked out of the store under the mistaken belief he was carrying his own briefcase, it is highly unlikely that he kept this briefcase in his trunk for several weeks, and for his mistake to be uncovered only after he was questioned by police.

6. Respondent is asking for "forgiveness of society [and] family." He is sorry and full of shame. Respondent has been honest in his dealings with his clients, has always fulfilled his obligations to them, and has always put their interests first. Nothing like this has happened before. Respondent did not inform his wife about the briefcase for fear that she would divorce him. After he explained the circumstances to her, she forgave him.

7. Respondent has held a Series 7 license to be a securities "registered representative" since 1983. He has held his California insurance agent licenses since 1986, but the California Insurance Commissioner revoked those licenses in January 2008. Respondent intends to seek a reconsideration of the Insurance Commissioner's decision.

8. Respondent obtains clients by referral only. He provided financial advice and helped clients purchase investments, including real property. As an agent of New England Financial, an affiliate of Metropolitan Life, he sold mutual funds and a variety of insurance products, including health insurance, annuities, and life insurance. After Respondent's conviction, his employer terminated him. Nevertheless, officers of his former employer wrote letters of recommendation attesting to Respondent's knowledge, conscientiousness, and good work habits. Respondent has been unable to find another employer that would allow him to sell insurance products and mutual funds. His real estate salesperson license is with Lais Realty. Jim Lai (Lai), supervising broker, is aware that Respondent is involved in

this administrative proceeding, but Respondent has not told Lai about his conviction. Lai might not continue to employ Respondent if he is told about it.

9. Respondent and his wife, a self-employed accountant, have two daughters, ages 12 and 14. Respondent and his wife moved their businesses into their home to have more time to spend with their daughters. Their daughters are active in various school and music programs, including gymnastics, piano, clarinet, and color guard. Respondent's license is very important to him. He expressed great sorrow about his circumstances.

### LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's real estate salesperson license under Business and Professions Code 10177, subdivision (b), in conjunction with section 490, for conviction of a crime involving moral turpitude, as set forth in factual finding number 4a, 4b, 4c, and 4d. Respondent's crime is substantially related to the qualifications, functions and duties of a real estate licensee. (Cal Code Regs., tit. 10, § 2910, subs. (a)(1), (4), and (8).)

2. It is well established that, since a real estate licensee often acts in a confidential and fiduciary capacity for his clientele, a real estate licensee must possess the qualifications of honesty and integrity. "The public exposing themselves to a real estate licensee has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license." (Golde v. Fox (1979) 98 Cal.App.3d 167, 177-178.) Respondent's plea of guilty and the record of his conviction establish that he was involved in dishonest acts. He may not relitigate his guilt in this proceeding.

3. The issue in this case is whether Respondent has established that he is fit to hold a real estate salesperson's license. A single occurrence of shoplifting a \$5,700 briefcase is not a particularly strong inference of bad character; however, Respondent's testimony denying that he intended to steal the briefcase raises additional issues. Much of Respondent's testimony in mitigation or explanation of his crime lacks corroboration or credibility. Statements he gave to the police and others were inconsistent. In particular, his story of how and when he came to know the briefcase did not belong to him was not believable. Respondent admits he later attempted to hide the briefcase. His failure to come forward and correct his error was dishonest. While a false statement of contrition is not required in this proceeding, Respondent's statements appear to demonstrate a failure to accept responsibility for his crime, which is the first step toward rehabilitation.

4. The Department has developed criteria pursuant to section 482, subdivision (b), for the purpose of evaluating the rehabilitation of a licensee against whom discipline is sought on account of a crime committed by the licensee. (Cal. Code Regs., tit. 10, (CCR) § 2912.) These criteria are:

Subdivision (a) -- Passage of at least two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee

of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.);

Subdivision (b) -- Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee;

Subdivision (c) -- Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action;

Subdivision (d) -- Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code;

Subdivision (e) -- Successful completion or early discharge from probation or parole;

Subdivision (f) -- Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol;

Subdivision (g) -- Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license;

Subdivision (h) -- Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted;

Subdivision (i) -- New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question;

Subdivision (j) -- Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction;

Subdivision (k) -- Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement;

Subdivision (l) -- Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and

Subdivision (m) -- Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

- (1) Testimony of the applicant;
- (2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns;
- (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to [licensee's] social adjustments;
- (4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances; and
- (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

5. Having found cause for discipline, the burden shifts to Respondent to establish rehabilitation. Respondent has not met his burden. Respondent has satisfied some of the applicable criteria of rehabilitation under CCR section 2912. He has paid the criminal assessment and restitution (subds. (b) & (g)). He has a stable family life (subd. (j)). On the

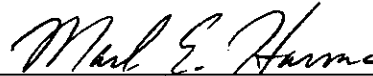
other hand, he will not complete probation until 2009 (subd. (e)). More importantly, Respondent has failed to demonstrate a change in attitude since his conviction (subd. (m)). Whereas Respondent is apologetic, and shows remorse over the consequences these events have caused him and his family, it is still not clear that he has learned from this situation. (Factual finding number 4b, 5a, 5b, 6, 8, & 9.)

6. Respondent's crime is serious. His former business colleagues have attested to his honesty and integrity in dealing with clients, which suggests that this crime is an anomaly. These persons, however, are not familiar with Respondent's attitude since his conviction. There is doubt Respondent has accepted responsibility for, and learned valuable lessons from, his misconduct. Despite his good reputation as a financial advisor, based on all the circumstances, and at the present time, it is not in the public interest to allow Respondent to maintain his real estate salesperson license.

#### ORDER

All licenses and licensing rights of Respondent, Cheng Tsung Lin, under the Real Estate Law are revoked.

DATED: March 3, 2008



MARK E. HARMAN  
Administrative Law Judge  
Office of Administrative Hearings

*[Handwritten signature]*

**FILED**

SEP 18 2007

MARTHA J. ROSETT, Counsel (SBN 142072)  
Department of Real Estate  
320 West Fourth St., #350  
Los Angeles, CA 90013-1105

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

(213) 576-6982  
(213) 620-6430

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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|--------------------------------------|----------------------------|
| In the Matter of the Accusation of ) | No. H-34308 LA             |
| CHENG TSUNG LIN, )                   | <u>A C C U S A T I O N</u> |
| Respondent. )                        |                            |

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against CHENG TSUNG LIN (hereinafter "Respondent"), is informed and alleges as follows:

1.

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

2.

At all times herein mentioned, Respondent was and still is licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a

1 real estate salesperson. Respondent was first licensed by the  
2 Department on or about September 13, 1985.

3 3.

4 On or about June 12, 2006, in the Superior Court of  
5 California, County of Orange, in Case No. 06HF0313, Respondent  
6 was convicted of violating Penal Code Section 487(a) (grand  
7 theft), a crime of moral turpitude which is substantially related  
8 to the qualifications, functions and duties of a real estate  
9 licensee. Respondent was placed on three years probation, the  
10 terms and conditions of which included serving 120 days in jail  
11 (or electronic monitoring), performing 80 hours of community  
12 service, and payment of \$8,000.00 to the Victim Witness Emergency  
13 Fund.

14 4.

15 Respondent's conviction, as set forth in Paragraph 3  
16 above, constitutes cause for the revocation or suspension of  
17 Respondent's license and/or license rights pursuant to Business  
18 and Professions Code Sections 490 and/or 10177(b).

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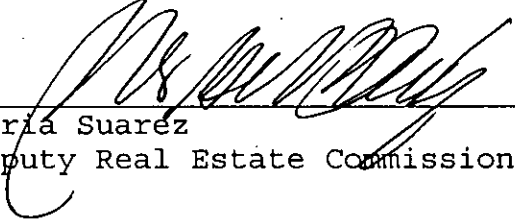
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1 WHEREFORE, the Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all licenses and/or license rights of Respondent,  
5 CHENG TSUNG LIN, under the Real Estate Law and for such other and  
6 further relief as may be proper under applicable provisions of  
7 law.

8 Dated at Los Angeles, California

9 this 13<sup>th</sup> day of September, 2007.

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11   
12 Maria Suarez  
13 Deputy Real Estate Commissioner  
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16  
17  
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19 cc: Cheng Tsung Lin  
20 Jiunu Shyong Lai  
21 Sacto.  
22 Maria Suarez  
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