

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of )	No. H-35587 LA
CHERYL LYNN CUPP, )	L-2009030565
Respondent. )	

DECISION

The Proposed Decision dated July 8, 2009, 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.

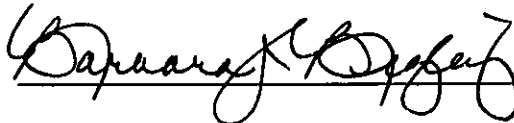
The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

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 AUGUST 25, 2009.

IT IS SO ORDERED 7-31-09.

JEFF DAVI  
Real Estate Commissioner



BY: Barbara J. Blgby  
Chief Deputy Commissioner

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

In the Matter of the Accusation of:

**CHERYL LYNN CUPP,**

**Respondent.**

Agency Case No. H-35587 LA

OAH Case No. 2009030565

**PROPOSED DECISION**

This matter was heard by Nancy Beezy Micon, Administrative Law Judge with the Office of Administrative Hearings, on June 11, 2009, in Los Angeles, California.

Lisette Garcia, Real Estate Counsel, represented Deputy Real Estate Commissioner Robin Trujillo (Complainant).

Cheryl Lynn Cupp (Respondent) was represented by attorney Edward O. Lear of the Century Law Group.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 11, 2009.

**FACTUAL FINDINGS**

1. On December 17, 2008, Complainant, in her official capacity, signed the Accusation. Respondent filed the Notice of Defense on January 29, 2009.
2. Complainant contends Respondent's felony conviction provides a basis to revoke or suspend Respondent's real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).
3. Respondent has held a real estate salesperson license since July 31, 1999, without any disciplinary action taken against her by the Department of Real Estate, until this action. Respondent's real estate salesperson license was in effect at all times relevant to this matter. It expires on July 30, 2011, unless renewed.
4. a. On May 24, 2006, in the Superior Court of the State of California, County of Shasta, in case number 050002107, Respondent was convicted, following a no contest plea, of violating Penal Code section 32 (Accessory to a Felony), a felony.

b. The court suspended imposition of Respondent's sentence and placed her on formal probation for three years. The terms and conditions of Respondent's probation included, among other terms, serving 60 days in county jail with credit for one day served (Respondent performed community service by working at a soup kitchen in Costa Mesa, in lieu of jail time), paying \$420 in restitution and fines, serving 60 days in the community alternative work program, and completing a counseling program. On December 28, 2007, the court converted the formal probation to informal probation.

c. The facts underlying Respondent's conviction are that, on April 4, 2004, in Jones Valley, California, Respondent's eldest son fled after being involved in a struggle, which resulted in his shooting and killing another person. On several occasions during the months following her son's crime, Respondent lied to police officers investigating the case by telling them that she had not heard from her son, and would cooperate in having her son turn himself in to law enforcement. In fact, Respondent had heard from her son a few days after the shooting. Thereafter, when speaking with police detectives, she had information concerning the whereabouts of her son but did not inform detectives of her knowledge. Respondent had also been sending care packages to her son. She also traveled to the State of Washington, where she purchased a car for her son's use. Respondent's son was arrested in Kettle Falls, Washington, on January 25, 2005, based on a tip from a citizen who saw Respondent's son's image on the television show *America's Most Wanted*.

Respondent explained that her 24-year-old son accidentally shot the victim of the crime during a struggle, and that her son was being stabbed by another person while the incident was taking place. Respondent's son was charged with first degree murder. Respondent felt that she needed to hire "the right" attorney to help her son. She was told the cost would be \$75,000. Respondent was interviewing attorneys, and attempting to gather the funds to hire one, when her son was arrested. Respondent provided, on the conviction detail report, the following explanation for her actions: "As a mother I felt helpless in not knowing exactly what to do. My son was being overly charged for a crime he did not intend to happen." Respondent's son was convicted of manslaughter. He was sentenced to 16 years in prison.

d. Respondent's crime is substantially related to a real estate salesperson's qualifications, functions, and duties, in that the crime involved the employment of deceit in order to achieve an end. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(4).)

e. On October 20, 2008, after the presentation of evidence and a hearing, the sentencing court entered its order under the provisions of Penal Code section 17, subdivision (b), reducing Respondent's felony conviction to a misdemeanor. The court also set aside and vacated the plea, verdict, and finding of guilt, entered a plea of not guilty, and dismissed the complaint, pursuant to Penal Code section 1203.4

5. Respondent expressed sincere remorse for her crime. She is embarrassed by what she did, and greatly regrets her actions. In retrospect, Respondent would have

immediately hired an attorney for her son, and would have convinced her son to turn himself in.

6. Respondent has not been arrested for any crimes before or after the one at issue in this Accusation. Respondent's criminal conduct was an isolated incident.

7. Respondent was persuasive in her assurances that her conviction was the result of unique circumstances, and that she is committed to leading a law-abiding life.

8. Respondent is 48-years-old. She is married, and has three children. The eldest son, who was the subject of Respondent's conviction discussed in factual finding number 4, and who is now 30-years-old, as well as a 14-year-old daughter and an 11-year-old son. Respondent has been a real estate agent for approximately 10 years. She has worked at the same company, First Team Real Estate in Huntington Beach, for her entire career. Respondent previously held a notary license, between approximately 1994 and 1998, but did not renew it when she became a real estate agent. Respondent also works part-time at an accounting job.

9. Respondent is involved in her children's lives. She volunteers at her children's sports, Boy Scout, and school activities.

10. Respondent submitted six letters from individuals who are aware of Respondent's crime and attest to her good character. Respondent's real estate colleagues describe her as a responsible, honest, highly skilled real estate salesperson. Respondent's friends know her as a trustworthy person of the highest personal integrity.

11. Respondent's manager at First Team Real Estate wrote: "Cheryl has presented me with the Statement of Issues . . . and [I] am aware of the criminal conviction that it represents. I . . . am confident that Cheryl Cupp represent[s] no danger to the public in any way. I feel that I am familiar with Ms. Cupp's character and have observed her interacting with her customers and other agents – during such observations she has conducted herself with a high level of integrity. I have, and will continue to endorse Cheryl Cupp's employment at First Team and further endorse her license with the DRE."

## LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's real estate salesperson license, pursuant to Business and Professions Code sections 10177, subdivision (b), and 490, for her felony conviction, as set forth in factual finding numbers 1-11, and legal conclusion numbers 2-8.

2. Business and Professions Code section 490 states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that

the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, function, or duties of the business or profession for which the license was issued.

[¶] ... [¶]

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

3. Business and Professions Code section 10177, subdivision (b), states in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee ... who ... has done any of the following ...

[¶] ... [¶]

(b) Entered 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, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

4. California Code of Regulations, title 10, section 2910, states in pertinent part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime ... the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

[¶] ... [¶]

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶] ... [¶]

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or act were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

5. Though Business and Professions Code section 10177, subdivision (b), does not require a felony conviction to be substantially related to a real estate licensee's qualifications, functions, and duties, in order to be the basis for license discipline, section 490 does. (*Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, 561-568.) In this case, Respondent's conviction is substantially related to the qualifications, functions, and duties of a real estate salesperson because it involved the use of deceit to achieve the end of helping her son evade capture by law enforcement. Therefore, Respondent's conviction provides a basis for the revocation of her real estate salesperson license, pursuant to Business and Professions Code sections 10177, subdivision (b) and 490.<sup>1</sup>

6. The objective of a disciplinary proceeding is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in real estate professionals. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1030-1031.) As cause exists for discipline against Respondent's license, Respondent bears the burden of establishing her reformation. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.)

7. Criteria have been developed by the Department to evaluate the rehabilitation of a licensee who has committed a crime. These criteria, found at California Code of Regulations, title 10, section 2912, are summarized as follows:

- Subdivision (a), passage of at least 2 years since the conviction;
- Subdivision (b), restitution to any person who suffered monetary loss;
- Subdivision (c), expungement of the conviction;
- Subdivision (d), expungement of the requirement to register as a sex offender;
- Subdivision (e), completion of, or early discharge from, the criminal probation;
- Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
- Subdivision (g), payment of any criminal fines or penalties;

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<sup>1</sup> Section 490 alone does not provide independent authorization for the Department to revoke Respondent's license. (*Petropoulos, supra*, 142 Cal.App.4th at 567.) But here, section 490 imposes the Legislature's requirement that Respondent's felony conviction be substantially related to the qualifications, functions, and duties of a real estate salesperson licensee, despite the absence of that requirement in Business and Professions Code section 10177, subdivision (b). Therefore, in this case, sections 490 and 10177, subdivision (b) both apply and together provide statutory authorization to discipline Respondent's license.

Subdivision (h), correction of business practices causing injury;  
Subdivision (i), new and different social and business relationships;  
Subdivision (j), stability of family life, and fulfillment of parental responsibilities;  
Subdivision (k), enrollment in or completion of educational or training courses;  
Subdivision (l), significant involvement in community, church or private programs for social betterment; and

Subdivision (m), change in attitude from the time of conviction to the present, evidenced by: testimony of the licensee and others, including family members, friends, or others familiar with Respondent's previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

8. A review of those criteria applicable to the facts of this case reveals that Respondent has met several regulatory criteria of rehabilitation. More than two years have passed since Respondent's conviction. (Cal. Code Regs., tit. 10, § 2912, subd. (a).) The sentencing court expunged Respondent's crime. (Cal. Code Regs., tit. 10, § 2912, subd. (c).) The Court also terminated her probation early. (Cal. Code Regs., tit. 10, § 2912, subd. (e).) Respondent paid all court-imposed fines. (Cal. Code Regs., tit. 10, § 2912, subd. (g).) She now has a stable family life, and fulfills her parental and familial responsibilities. (Cal. Code Regs., tit. 10, § 2912, subd. (j).) Most importantly, Respondent credibly demonstrated that she has had a change in attitude from that which existed at the time of the crime. (Cal. Code Regs., tit. 10, § 2912, subd. (n).) There was no evidence that Respondent has ever been involved in a crime before this one isolated incident. Therefore, while her criminal actions were substantially related to her qualifications, functions, and duties as a real estate salesperson, the evidence supports a conclusion that the public would not be harmed by allowing Respondent to hold a restricted license.

### **ORDER**

All licenses and licensing rights of Respondent Cheryl Lynn Cupp 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.

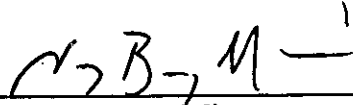
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education 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 notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, California 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an



independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: July 8, 2009.

  
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Nancy Beezy Micon  
Administrative Law Judge  
Office of Administrative Hearings

1 LISSETE GARCIA, Counsel (SBN 211552)  
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) 576-6914

FILED  
JAN. 7, 2009  
DEPARTMENT OF REAL ESTATE

By                     

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of ) NO. H-35587 LA  
12 )  
13 CHERYL LYNN CUPP, ) A C C U S A T I O N  
14 ) Respondent. )

15 The Complainant, Robin Trujillo, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of Accusation  
17 against CHERYL LYNN CUPP, aka Cheryl Cupp ("Respondent"), is  
18 informed and alleges in her official capacity as follows:

19 I

20 At all times herein mentioned, Respondent was and is  
21 presently licensed by the Department of Real Estate of the State  
22 of California ("Department") as a real estate salesperson under  
23 the Real Estate Law, Part 1 of Division 4 of the California  
24 Business and Professions Code ("Code").

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1 II

2 Pursuant to the provisions of Code Section 10153.3,  
3 the Department originally issued a real estate salesperson  
4 license to the Respondent on July 31, 1999.

5 III

6 On or about May 24, 2006, in the Superior Court of  
7 California, County of Shasta, in Case No. 05-02107, Respondent  
8 was convicted of violating Penal Code Section 32 (accessory  
9 after the fact/knowledge of crime), a felony. Said crime bears  
10 a substantial relationship to the qualifications, functions or  
11 duties of a real estate licensee under Section 2910, Title 10,  
12 Chapter 6, California Code of Regulations.

13 IV

14 The crime of which Respondent was convicted, as  
15 alleged in Paragraph III above, constitutes cause under Code  
16 Sections 490 and 10177(b) for the suspension or revocation of  
17 all licenses and license rights of Respondent under the Real  
18 Estate Law.

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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 licenses and/or license rights of Respondent,  
5 CHERYL LYNN CUPP, under the Real Estate Law (Part 1 of Division  
6 4 of the Business and Professions Code) and for such other and  
7 further relief as may be proper under other applicable  
8 provisions of law.

9 Dated at Los Angeles, California

10 this 17 day of December, 2008.

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13 Deputy Real Estate Commissioner  
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24 cc: Cheryl Lynn Cupp  
25 First Team Real Estate  
26 Robin Trujillo  
27 Sacto.