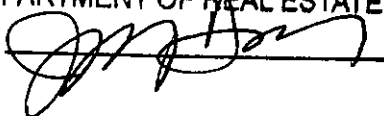


7/20/10

**FILED**

DEC 30 2010

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

\* \* \*

In the Matter of the Accusation of )	
VICTORIA AVALOS, )	NO. H-36432 LA
Respondent. )	L-2010021092

ORDER DENYING RECONSIDERATION

On November 28, 2010, a Decision was rendered in the above-entitled matter. The Decision was to become effective on December 23, 2010 and was stayed by separate Order to January 3, 2011.

On December 20, 2010, Respondent petitioned for reconsideration of the Decision of November 28, 2010.

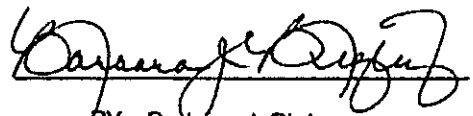
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I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of November 28, 2010, and reconsideration is hereby denied.

IT IS SO ORDERED 12-29-2010

JEFF DAVI  
Real Estate Commissioner



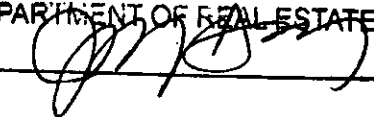
BY: Barbara J. Bigby  
Chief Deputy Commissioner

12/20/10

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**FILED**

DEC 20 2010

DEPARTMENT OF REAL ESTATE  
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\*\*\*\*

In the Matter of the Accusation of	)	NO. H-36432 LA
	)	
VICTORIA AVALOS,	)	L-2010021092
	)	
Respondent.	)	
_____)		

ORDER STAYING EFFECTIVE DATE

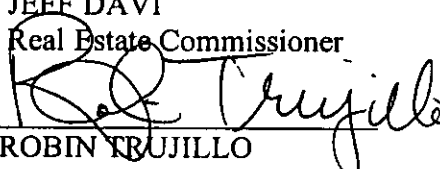
On November 28, 2010, a Decision was rendered in the above-entitled matter to become effective December 23, 2010.

IT IS HEREBY ORDERED that the effective date of the Decision of November 28, 2010, is stayed for a period of ten (10) days to consider Respondent's petition for reconsideration.

The Decision of November 28, 2010, shall become effective at 12 o'clock noon on January 3, 2011.

DATED: December 20, 2010


JEFF DAVI  
Real Estate Commissioner

By:   
ROBIN TRUJILLO  
Managing Deputy Commissioner

**FILED**

DEC 03 2010

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
BY: 

\* \* \* \* \*

In the Matter of the Accusation of )	No. H-36432 LA
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)	L-2010021092
VICTORIA AVALOS,	)
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)	)
Respondent.	)
_____)	)

DECISION

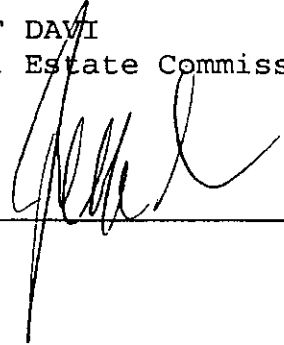
The Proposed Decision dated October 27, 2010, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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 DEC 23 2010

IT IS SO ORDERED 11.28-2010

JEFF DAVI  
Real Estate Commissioner  
  
\_\_\_\_\_

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

VICTORIA AVALOS,

Respondent.

Case No.: H-36432 LA

OAH No.: 2010021092

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on October 4, 2010.

Julie L. To, Real Estate Staff Counsel, represented the Complainant.

Respondent appeared and was represented by Fredrick M. Ray, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

*Parties*

1. The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, brought the Accusation in her official capacity.

2. Victoria Avalos, Respondent herein, is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate salesperson.

*Criminal Conviction*

3. On December 13, 2008, Respondent stole merchandise from a Marshall's Department Store. As a result of that conduct she was subjected to criminal proceedings.

Thereafter, on February 13, 2009, in the Superior Court of the State of California, County of Los Angeles, in Case No. 9WW00203, Respondent was convicted of violating Penal Code section 484, subdivision (a) (petty theft), a misdemeanor and a crime of moral turpitude.

*Aggravation*

4. On September 8, 2009, in the Superior Court of the State of California, County of Los Angeles, in Case No. 9DY04020, Respondent was convicted of violating Vehicle Code section 12500, subdivision (a) (driving with a suspended license), a misdemeanor. Respondent did complete a twelve month summary probation.

*Rehabilitation*

5. As a result of the theft conviction Respondent was sentenced to three years probation; one day in jail; ordered to perform ten days of CalTrans; and ordered to stay 100 yards away from Marshall's in Pico Rivera, California. In lieu of CalTrans work Respondent did pay a fine and is, presently, in compliance with probation.

6. Respondent, 36 years of age, is the sole parent of a 16 year old son and provides for his financial support. Additionally, her parents died some years ago and she has undertaken the obligation of supporting her 22 year old brother, a college student. Another brother, 30 years old, lives in Respondent's household. Respondent, at present, has stability of family life and fulfills familial obligations.

7. Respondent's employing broker testified, credibly, as to Respondent's excellent work ethic and as to her honesty and trustworthiness while performing as a licensee at the broker's office. Additionally, three others known to Respondent – a client, an office worker, another licensee – proffered character letters as to her work ethic and trustworthiness.

8. Respondent is a member of St. Bernard Church. She does volunteer work, from time to time, for the band at Mayfair High School, where her son is a band member. She has received a Short Sales and Foreclosure Resource Certification on March 15, 2010, after three days of training and on May 5, 2010, was certified as a HAFA (Home Affordable Foreclosure Alternative) after a week of training. Respondent has suffered no prior discipline and there are no pending complaints against Respondent.

9. Respondent is commended for her rehabilitative conduct set forth in Findings 6, 7 and 8. However, the crime is recent. The crime, *per se*, involves moral turpitude. There is no record of any other conviction and there is no record that Respondent is not presently in conformity to society's norms and rules. However, given a recent crime involving moral turpitude a record of clear and convincing rehabilitation is necessary for continued licensure. Respondent has not yet established or demonstrated such rehabilitation. In particular, there is no evidence of successful completion of probation and expungement of the conviction.

## LEGAL CONCLUSIONS

### *Applicable Statutes and Regulations*

1. Business and Professions Code section 490 provides in pertinent part:

(a) . . . 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, functions 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. . . .

- - -

2. Business and Professions Code section 10177, subdivision (b) provides:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, 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.

3. Penal Code section 484, subdivision (a) provides in pertinent part:

484 (a) Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her,

or who shall knowingly and designedly, by any false or fraudulent representation or pretence, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft.

*Substantial Relationship*

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

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in section 480, (a)(2) or 480, (a)(3) of the Code, 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:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

- - -

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

- - -

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

5. The necessary elements of a crime under Penal Code sections 484, subdivision (a) include the fraudulent taking of funds belonging to another; the employment of misrepresentation to achieve an end; the doing of an unlawful act with the intent of conferring a financial benefit upon Respondent. Accordingly, the crime set forth in Finding



3 bears a substantial relationship under California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (a)(4) and (a)(8), to the qualifications, functions or duties of a real estate licensee.

*Violation*

6. Respondent's conviction for the substantially related crime set forth in Finding 3 constitutes cause to discipline her real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

*Penalty Considerations*

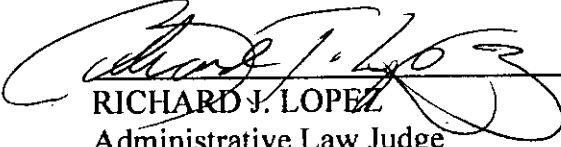
7. California Code of Regulations, title 10, section 2912, sets forth criteria of rehabilitation that have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), to evaluate the rehabilitation of a licensee who is subject to disciplinary action on account of a crime or act committed by the Respondent. Additionally, the public interest must be considered in that the objective of an administrative proceeding relating to licensing is to protect the public. *Fahmy v. MBC* (1995) 38 Cal.App. 4<sup>th</sup> 8107, 817; *Ex Parte Brounsall* (1778) 2 Cowp. 829, 98 Eng.Rep. 1385.

8. Respondent's conviction is less than two years remote and, thus, Respondent has not met the initial factor set forth in the criteria. Additionally, the crime has not been expunged and Respondent is still on probation. It would be against the public interest to permit Respondent to now act as a real estate salesperson. Respondent is encouraged to complete the rehabilitative process and, in the event of a petition for reinstatement, document same and provide full disclosure to the Department.

ORDER

All licenses and licensing rights of Victoria Avalos under the Real Estate Law are  
revoked.

Dated: October 27, 2010

  
RICHARD J. LOPEZ

Administrative Law Judge  
Office of Administrative Hearings

RJL:rfm

1 JULIE L. TO, Counsel (SBN 219482)  
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**

JAN 20 2010

DEPARTMENT OF REAL ESTATE

BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 VICTORIA AVALOS, )  
13 Respondent. )  
14 \_\_\_\_\_ )

No. H- 36432 LA

A C C U S A T I O N

15  
16 The Complainant, ROBIN TRUJILLO, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of Accusation  
18 against VICTORIA AVALOS ("Respondent"), alleges as follows:

19 1.

20 The Complainant, ROBIN TRUJILLO, a Deputy Real Estate  
21 Commissioner of the State of California, makes this Accusation  
22 in her official capacity.

23 2.

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

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3.

On or about February 13, 2009, in the Superior Court of the State of California, County of Los Angeles, in Case No. 9WW00203, Respondent was convicted of violating Penal Code Section 484(A) (petty theft), a misdemeanor. Respondent was sentenced to three years probation; one day in jail; ordered to perform ten days of Cal Trans; and ordered to stay 100 yards away from Marshall's in Pico Rivera, California.

4.

In aggravation, on or about September 8, 2009, in the Superior Court of the State of California, County of Los Angeles, in Case No. 9DY04020, Respondent was convicted of violating Vehicle Code Section 12500(A) (driving with a suspended license), a misdemeanor. Respondent was sentenced to twelve months probation and ordered to pay fines (or perform 71 hours of community service).

5.

The conviction described in Paragraph 3, by its facts and circumstances, is a crime of 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.

6.

The crime of which Respondent was convicted, as described in Paragraph 3, constitutes cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of the

1 license and license rights of Respondent under the Real Estate  
2 Law.

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

11 Dated at Los Angeles, California

12 this 13 day of January, <sup>2010</sup> ~~2009~~ <sup>(PT)</sup>

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15 ROBIN TRUJILLO  
16 Deputy Real Estate Commissioner  
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25 cc: VICTORIA AVALOS  
26 Majestic Investments, Inc.  
27 ROBIN TRUJILLO  
Sacto.