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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

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In the Matter of the Accusation of	)	DRE No. H-37682 LA
	)	
FRANCES LI-FEN WANG,	)	OAH No. 2011120990
	)	
	)	
	)	
Respondent.	)	
_____	)	

DECISION

The Proposed Decision dated November 14, 2012, 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.

Pursuant to Section 11517(c) (2) of the Government Code, the following correction is made to the Proposed Decision:

Proposed Decision, Page 2, Line 1, "earnings" is corrected to read "earrings."

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
January 23, 2013.

IT IS SO ORDERED 12/21/2012

Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

FRANCES LI-FEN WANG

Respondent.

Case No.: H-37682 LA

OAH No.: 2011120990

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 18, 2012.

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

Respondent appeared and was represented by Jonathan K. Golden, 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. Frances Li-Fen Wang, Respondent herein, is presently licensed and has license privileges under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code), as a real estate broker.

Criminal Conviction Chronology

3. On February 19, 2011, Respondent entered a Kohl's Department store (Kohl's) with the intent to commit burglary. She was observed by Kohl's surveillance doing the following: She took at least 16 of Kohl's items of merchandise (an eclectic collection of

cosmetics, bras, underwear, earnings, sleepwear) and placed them in her bag and went to the fitting rooms. While in a fitting room Respondent – with stealth – removed store tags from the items (some items with her scissors) and placed the items in her cloth bag. When she exited the store she was confronted and detained by Kohl's personnel until the arrival of a Deputy Sheriff (Deputy).

4. Upon investigation by the Deputy Respondent admitted to entering the store with the intent to commit burglary. She told the Deputy she had a recent neck injury and believed stealing the listed items and wearing clothing that was yellow in color would make her feel better. She told the Deputy she did not bring her wallet in the store because she did not intend to pay for the items. She further stated that she used the handheld scissors that were found in her bag to help cut and open some of the packaging on the stolen items. Respondent appeared to be apologetic and stated it was the first time she had ever stole from a store. Respondent was then charged with a violation of Penal Code section 459 (Burglary).

5. On February 23, 2011, a two count misdemeanor complaint issued against Respondent in Los Angeles Superior Court Case No. 1JB01957. The Counts allege:

COUNT 1

On or about February 19, 2011, in the County of Los Angeles, the crime of second degree commercial burglary, in violation of Penal Code section 459, a misdemeanor, was committed by Frances LiFen Wang, who did enter a commercial building occupied by Kohl's with the intent to commit larceny and any felony.

* * * * *

COUNT 2

On or about February 19, 2011, in the County of Los Angeles, the crime of petty theft, in violation of Penal Code section 484(a), a misdemeanor, was committed by Frances LiFen Wang, who did unlawfully steal, take, and carry away the personal property of another, to wit, Kohl's.

6. On March 17, 2011, in the Superior Court of the State of California, County of Los Angeles, in said Case No. 1JB01957, Respondent pled *nolo contendere* to said Count 2 and was convicted of a violation of Penal Code section 484, subdivision (a) (theft), a misdemeanor. The Court found a factual basis for the plea and accepted the plea.

Rehabilitation

7. As a result of the conviction Respondent was sentenced to two years probation, two days in jail, ordered to pay fines and ordered to stay away from all Kohl's Department stores. Respondent timely complied with all conditions of probation. Accordingly, on May 30, 2012, the Court allowed early termination of probation and ordered the case dismissed (expunged) pursuant to Penal Code section 1203.4.

8. Respondent has suffered no other conviction. She is, presently, in compliance with the norms and rules of civil society.

9. Respondent is a single parent of a nineteen year old daughter attending college who lives with Respondent. Respondent provides all support to her daughter. Additionally, she sends money to her parents who do not live in the USA to provide for their financial support. Respondent fulfills all parental and familial obligations.

10. Respondent has been a licensee of the Department since 2002 – first as a salesperson then, in 2005, as a real estate broker. She has suffered no prior discipline.

11. Clifford Collins, a Real Estate Broker gave credible testimony as to Respondent's trustworthiness and diligence while supervising her work as a mortgage loan associate while both were employed by the Bank of America. Stephen L. Philipson, Attorney, gave credible testimony, as a personal friend of Respondent's as to her trustworthiness and fealty. Both Mr. Collins and Mr. Philipson were generally aware of the fact of a misdemeanor theft. However, as a caveat, neither was aware of any particulars thereof, including the planning and stealth involved.

12. Respondent is commended for her start on the road of rehabilitation set forth in Findings 7 through 11. The crime, *per se*, involves moral turpitude. Given a recent crime involving moral turpitude a record of clear and convincing rehabilitation is necessary for continued licensure. The time since the conviction is not sufficient to establish such rehabilitation as is demonstrated in the Findings which follow.

13. There is no evidence by way of documentation of completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement. There is no evidence of new and different social and business relationships from those which existed at the time of the theft. There is no evidence by way of documentation of any volunteer work.

14. Respondent understated the gravity of the crime and failed to take responsibility for same using the following as an excuse:

... I went to a Chinese fortune teller to find out my fate.
She told me that yellow as an energy color and that I
needed to get something yellow, like jewelry or clothes,

etc. without anyone knowing about it. I was so weak in my mind and desperate for help that I thought this meant I should steal something yellow. I foolishly tried to steal some clothes from Kohl's Department store. . . .

15. There was no evidence of a change in attitude from that which existed at the time of the conviction as demonstrated by evidence from probation officers or law enforcement officials competent to testify as to Respondent's social adjustments. In sum, Respondent did not establish that, at present, her moral compass has been properly aligned.

16. As a real estate broker Respondent is not now employed by the Bank of America (B of A) and is not otherwise supervised. B of A, mandated to terminate her employment because of a disqualifying conviction (Finding 6), notified Respondent as follows:

As mandated by the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the Farm Credit Administration, and the National Credit Union Administration (collectively, the "Agencies"), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act") requires that all banks, credit unions, and other entities involved in residential mortgage loan origination ("MLOs") perform proper background screenings to ensure that individuals in a MLO role have no previous revocation of a MLO license, no conviction, guilty plea, or nolo contendere plea involving fraud, dishonesty, breach of trust, or money laundering (a "disqualifying 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. . . .

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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.

Substantial Relationship

3. 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.

4. Theft – a crime that in this case required planning and sophistication – is a crime of moral turpitude. The necessary elements of Respondent’s criminal conduct include the fraudulent taking of property belonging to another; the employment of fraud to achieve an end and the doing of unlawful acts for economic gain. Accordingly, the crime set forth in Finding 6 bears a substantial relationship under California Code of Regulations, title 10, section 2910, subdivisions (a)(1)(4) and (8), to the qualifications, functions or duties of a real estate licensee.

Violation

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

Penalty Considerations

6. “The basic reason for disciplinary action in matters of this kind . . . is the protection of the public against unethical and dishonest conduct on the part of those engaged in the real estate business.” (*Small v. Smith* (1971) 16 Cal. App. 3d 450, 456, quoting from *Marks v. Watson* (1952) 112 Cal. App. 2d 196, 200.) The purpose of an administrative proceeding concerning licensure is not to punish the Respondent, but rather is “to protect the public from dishonest, immoral, disreputable or incompetent practitioners [citations omitted].” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal. App. 3d 853, 856.)

7. With regard to the public interest and public protection 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. Respondent has yet to meet the criteria of rehabilitation as is demonstrated in Findings 12 through 16.

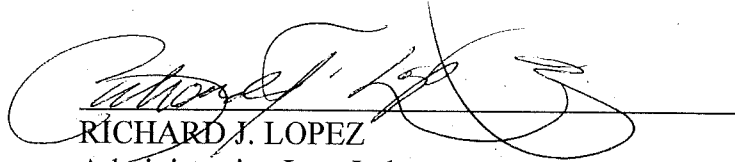
8. A real estate broker, who acts as a fiduciary, should possess character traits of honesty, integrity and trustworthiness. Respondent’s conduct resulting in a conviction for theft displayed the antithesis of those traits. Accordingly, the Order which follows is consistent with the public interest.

ORDER

All licenses and licensing rights of Frances Li-Fen Wang under the Real Estate Law
are hereby revoked.

Dated:

November 14 2012



RICHARD J. LOPEZ

Administrative Law Judge

Office of Administrative Hearings

RJL:ref