

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 21 2005

DEPARTMENT OF REAL ESTATE

By SEA

* * *

In the Matter of the Application of)
BILLY SIENG PHONG,)
Respondent.)
_____)

NO. H-4287 SAC
OAH No. N-2005060210

DECISION

The Proposed Decision dated September 21, 2005, 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 application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon
on NOV 10 2005.

IT IS SO ORDERED 10-12 2005.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

BILLY SIENG PHONG,

Respondent.

Case No. H-4287 SAC

OAH No. N2005060210

PROPOSED DECISION

This matter was heard before Administrative Law Judge Tamara M. Colson, State of California, Office of Administrative Hearings, on August 22, 2005, in Sacramento, California.

Charles W. Koenig, Deputy Real Estate Commissioner of the State of California (complainant), was represented by Michael B. Rich, Counsel, Department of Real Estate.

Billy Sieng Phong (respondent) represented himself.

Evidence was received, the hearing and record were closed, and the matter was submitted on August 22, 2005.

FACTUAL FINDINGS

1. Respondent filed an application, with the Department of Real Estate (Department), for the issuance of a real estate salesperson's license. His application was denied based on his criminal convictions.

2. Complainant, solely in his official capacity, made and filed the Statement of Issues against respondent. Respondent timely filed a Notice of Defense on Application and, pursuant to Government Code section 11500 et seq., the matter was set for an evidentiary hearing before the Office of Administrative Hearings. On June 17, 2005, respondent was served with the First Continued Notice of Hearing, indicating the date, time and place for hearing.¹

¹ Exhibits A, B, C, and G, contain confidential information related to third parties and financial information related to respondent. Therefore, these exhibits have been placed in a sealed envelope so as not to be included in the pub-

3. On November 10, 1999, by a plea of nolo contendere, in the Superior Court of California, County of Sacramento, case number 99F08122, respondent was convicted of a felony violation of Penal Code section 496, subdivision (a), receiving stolen property. Defendant's sentence was suspended and he was placed on five years formal probation, with conditions including 365 days in the Sacramento County Jail, restitution to the victims in an amount determined by the probation officer, fines, fees and other standard conditions. Later, it was stipulated that respondent pay \$7,000.00 to Bank of America and \$240.00 to Hewlett Packard in restitution. The circumstances surrounding the conviction are that in the summer of 1999, respondent knowingly received stolen computers, printers, CD-Roms and other related equipment. He intended to sell the computers and equipment, and sold some of the computers and equipment on the e-bay internet website.

4. On July 25, 2001, by a plea of nolo contendere, in the Superior Court of California, County of Sacramento, case number CC087168, respondent was convicted of: a felony violation of Penal Code section 484/487, subdivision (a), grand theft; a felony violation of Penal Code section 459/460, subdivision (b), second degree burglary; and an enhancement for theft in excess of \$50,000.00, pursuant to Penal Code section 12022.6, subdivision (a)(1). Defendant's sentence was suspended and he was placed on five years formal probation, with conditions including nine months in jail, restitution to the victims of approximately \$79,560.00 jointly and severally with two other defendants, fines, fees and other standard conditions. Respondent participated in multiple commercial burglaries in which a group of people broke into business establishments and stole computers and related equipment.

5. Respondent is still on probation for his conviction in Santa Clara County and has only paid approximately \$3,000.00 in restitution. Additionally, on January 24, 2003, respondent admitted to a violation of probation for his Sacramento County conviction. Although respondent is not in contact with all of the persons involved in his crimes, one of the persons involved in his crimes is his best friend from childhood, with whom respondent is still in contact. Respondent's crimes were complex, involved planning and property worth a large amount of money. Respondent previously applied for a license and that request was denied in agency case number H-3654 SAC and Office of Administrative Hearings case number N2002050061.

7. Respondent has made some steps toward rehabilitation. He has completed his probation in Sacramento County and paid his restitution, fines and fees for his Sacramento County conviction. Respondent has ownership interest in two businesses, a cellular phone business and a restaurant that he owns with his father. He took two years off from school to start the restaurant, but will resume school this fall at Trinity Life Bible College. Respondent is involved in the community through active participation in his church where he is in charge of the Adult/College Ministries and leads bible study. Respondent financially sponsors three children, two in Indonesia and one in Thailand, through Compassion International. He also

lic record of this matter and only to be opened by the Department if necessary to evaluate this matter or by order of a Judge of the Office of Administrative Hearings or court of competent jurisdiction.

donates to Gospel for Asia and recently participated in a missionary trip to Africa. Respondent was 19 years old at the time of his crimes in 1999 and indicates that his time in jail was a growing experience. He admitted to his behavior that led to his convictions candidly and without hesitation.

8. Mohammad Siddique, a licensed real estate broker, testified in support of respondent. He is a regular patron at respondent's restaurant and describes respondent as a good person. Mr. Siddique has looked to respondent for business advice and found him to be very knowledgeable. Mr. Siddique is aware of respondent's convictions, is still planning to employ him if respondent is issued a license, and implicitly trusts respondent to work at his business.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480 provides in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. 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 which 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.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

...

2. Cause exists for denial of respondent's application for a real estate salesperson's license pursuant to Business and Professions Code section 480, subdivision (a), as set forth in Factual Findings 3 through 4. The crimes of which respondent was convicted are substantially related to the qualifications, duties or functions of a real estate salesperson. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If appellant's offense reflects unfavorably on his honesty, it may be said to be substantially related to his qualifications." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.) A real estate salesperson has access to confidential and financial information as well as person's homes and must make certain disclosures. The crimes of burglary, grand theft and receiving stolen property involve dishonesty, thus, are substantially related to a real estate license. The convictions also involved an unlawful act intending to confer financial or economic benefit on respondent, therefore, are deemed substantially related to a real estate license. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) The employment of fraud, deceit, falsehood or misrepresentation to achieve an end is present in also present in respondent's convictions as he knowingly sold stolen property and pursuant to California Code Regulations, title 10, section 2910, subdivision (a)(4), are deemed substantially related to a real estate license.

3. Business and Professions Code section 10177 provides in pertinent part:

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, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock 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 involving moral turpitude, 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. Cause exists for denial of respondent's application for a real estate salesperson's license pursuant to Business and Professions Code section 10177, subdivision (b), as set forth in Factual Findings 3 through 4. Respondent was convicted of burglary, theft and receiving stolen property, which are crimes of moral turpitude. (See *In re Pagirigan* (2001)

25 Cal.4th 1 [theft is crime of moral turpitude]; *In re Hurwitz* (1976) 17 Cal.3d 562, 567-568 [burglary crime of moral turpitude].) Additionally, respondent was convicted of multiple felonies.

5. Pursuant to section 482(a) of the Business and Professions Code, the Department has developed criteria, found at California Code of Regulation, title 10, section 2911, for the purpose of evaluating the rehabilitation of an applicant for issuance of a license.²

² The criteria for rehabilitation are as follows:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

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

(e) Successful completion or early discharge from probation or parole.

(f) Abstinance from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

(i) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

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

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

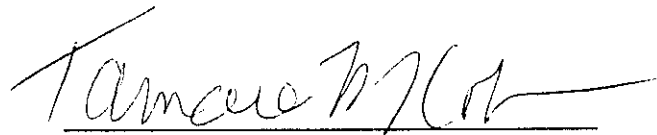
(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

6. As set forth in Factual Findings 3 through 8, the evidence regarding aggravation, mitigation, and rehabilitation was weighed and balanced. Although respondent has shown some signs of rehabilitation, his rehabilitation is not yet complete. Respondent committed very serious crime involving dishonesty for which he remains on probation. Therefore, it would not be in the public interest to grant respondent a real estate license at this time.

ORDER

Respondent Billy Sieng Phong's application for a real estate salesperson's license is DENIED.

Dated: 09/21/05



TAMARA M. COLSON
Administrative Law Judge
Office of Administrative Hearings

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(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.

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FILED
MAY 18 2005

DEPARTMENT OF REAL ESTATE

By S. Ee

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 BILLY SIENG PHONG) H-4287 SAC
13 Respondent.) STATEMENT OF ISSUES
14)

15 The Complainant, CHARLES W. KOENIG, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against BILLY SIENG PHONG (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about August 30, 2004.

23 II

24 Complainant, CHARLES W. KOENIG, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity and not otherwise.

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III

On or about November 10, 1999, in the Superior Court, County of Sacramento, State of California, in case number, 99F08122 Respondent was convicted of a violation of Section 496(a) of the California Penal Code (Knowingly receiving stolen property), a felony and a crime involving moral turpitude and/or a crime which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

On or about July 25, 2001, in the Superior Court, County of Santa Clara, State of California, in case number CC87168, Respondent was convicted of a violation of Section 487(a) of the California Penal Code (Grand theft), and Section 459 and 460(b) (Burglary in the second degree) all pursuant to Section 12022.6(a)(1) of the California Penal Code (Enhancement for theft in excess of \$50,000.00), felonies and crimes involving moral turpitude and/or crimes which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

V

The crimes of which Respondent was convicted, as alleged in Paragraphs III and IV, above, individually and/or collectively, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and/or 10177(b) of the California Business and Professions Code.

