

FILED

MAY 20 2014

BUREAU OF REAL ESTATE

By *L. Frost*

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BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	NO. H-6014 SAC
)	
BILLY SIENG PHONG,)	<u>STIPULATION AND WAIVER</u>
)	
Respondent.)	

It is hereby stipulated by and between BILLY SIENG PHONG ("Respondent") and his attorney, Frank M. Buda, and the Complainant, acting by and through Jason D. Lazark, Counsel for the Bureau of Real Estate, as follows for the purpose of settling and disposing of the Statement of Issues filed on August 29, 2013, in this matter:

1. On November 7, 2013, a formal hearing on the Accusation was held in accordance with the provisions of the Administrative Procedure Act ("APA") before Administrative Law Judge ("ALJ") Wilbert E. Bennett where, after evidence and testimony were received, the record was closed and the matter was submitted for decision.
2. On December 9, 2013, ALJ Bennett issued a Proposed Decision.
3. On January 6, 2014, the Commissioner rejected the Proposed Decision of December 9, 2013 and issued a Notice that the disposition would be determined by him after consideration of the record in the case including the transcripts of the proceedings held on December 9, 2013 and any written argument hereafter submitted on behalf of Respondents and Complainants.

1 4. The parties wish to settle this matter without further proceedings.

2 5. Respondent, pursuant to the limitations set forth below, hereby admits that the
3 factual allegations in the Statement of Issues filed in this proceeding are true and correct and the
4 Commissioner shall not be required to provide further evidence to prove such allegations.

5 6. It is understood by the parties that the Commissioner may adopt the
6 Stipulation and Waiver as his decision in this matter thereby imposing the penalty and sanctions
7 on Respondent's real estate license and license rights as set forth in the below Order. In the
8 event the Commissioner, in his discretion, does not adopt the Stipulation and Waiver, the
9 Stipulation and Waiver shall be void and of no effect. If that occurs, the Commissioner will
10 again remand the case to the Administrative Law Judge to take and consider additional evidence
11 in this matter.

12 7. The Order or any subsequent Order of the Commissioner made pursuant to
13 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
14 administrative or civil proceedings by the Bureau with respect to any matters which were not
15 specifically alleged to be causes for accusation in this proceeding as admitted or withdrawn.

16 DETERMINATION OF ISSUES

17 By reason of the foregoing stipulations, admissions, and waivers, and solely for
18 the purpose of settlement of the pending Statement of Issues without further proceedings, it is
19 stipulated and agreed that the following Determination of Issues shall be made:

20 The acts and/or omissions of Respondent as described in the Statement of Issues
21 violate Sections 480(a) (conviction of crime) and 10177(b) (conviction of crime) of the Business
22 and Professions Code ("Code").

23 ORDER

24 1. Pursuant to 10156.5 of the Code, a restricted real estate salesperson's license is
25 hereby issued to Respondent.

26 2. The restricted real estate salesperson license issued to Respondent shall not confer
27 any property right in the privileges to be exercised including the right of renewal, and the Real

1 Estate Commissioner may by appropriate order suspend the right to exercise any privileges
2 granted under this restricted license in the event of:

3 a. Respondent's conviction (including a plea of guilty or nolo contendere) of a crime
4 which bears a substantial relationship to Respondent's fitness or capacity as a real
5 estate licensee; or

6 b. The receipt of evidence that Respondent has violated provisions of the California
7 Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate
8 Commissioner or conditions attaching to this restricted license.

9 3. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by
10 sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box
11 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of Respondent's arrest,
12 the crime for which Respondent was arrested and the name and address of the arresting law
13 enforcement agency. Respondent's failure to timely file written notice shall constitute an
14 independent violation of the terms of the restricted license and shall be grounds for the
15 suspension or revocation of that license.

16 4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate
17 license nor the removal of any of the conditions, limitations, or restrictions attaching to the
18 restricted license until three (3) years have elapsed from the date of issuance of the restricted
19 license to Respondent.

20 5. With the application for license, or with the application for transfer to a new
21 employing broker, Respondent shall submit a statement signed by the prospective employing
22 broker on a form approved by the Bureau of Real Estate wherein the employing broker shall
23 certify as follows:

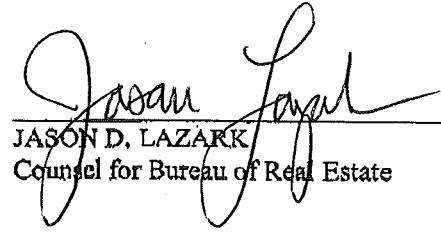
24 a. That broker has read the Statement of Issues which is the basis for the issuance of
25 the restricted license; and
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b. That broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

5-9-2014

DATED


JASON D. LAZARK
Counsel for Bureau of Real Estate

I have read the Stipulation and Waiver, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the APA, (including but not limited to Sections 11521, and 11523 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right to seek reconsideration and the right to seek judicial review of the Commissioner's Decision and Order by way of a writ of mandate.

05/06/2014

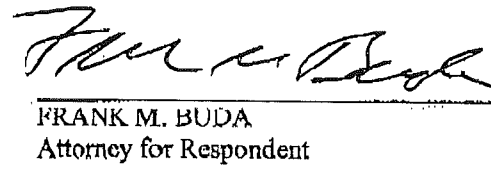
DATED


BILLY SIENG PHONG
Respondent

I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly.

5-6-14

DATED

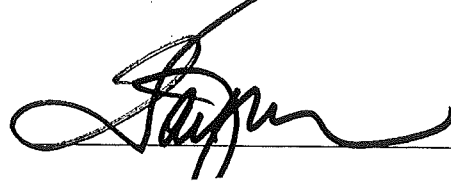

FRANK M. BUDA
Attorney for Respondent

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The January 6, 2014 Notice that the disposition is to be determined after
consideration of the record in the case including the transcripts of the proceedings and any
written argument, is hereby vacated and the foregoing Stipulation and Waiver is hereby adopted
as my Decision in this matter and shall become effective at 12 o'clock noon on JUN 10 2014

IT IS SO ORDERED 5/19/2014.

REAL ESTATE COMMISSIONER




WAYNE S. BELL

FILED

February 14, 2014

BUREAU OF REAL ESTATE

By 

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of

BILLY SIENG PHONG

Respondents.

No. H-6014 SAC

OAH No. 2013080991

NOTICE

TO: BILLY SIENG PHONG, Respondent, and FRANK M.BUDA, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 9, 2013, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 9, 2013, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on November 7, 2013, and any written argument hereafter submitted on behalf of Respondents and Complainant.

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Written argument of Respondents to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of November 7, 2013, at the Sacramento office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondents at the Sacramento office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

DATED: JANUARY 6, 2014

Real Estate Commissioner



WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

BILLY SIENG PHONG,

Respondent.

Case No. H-6014 SAC

OAH No. 2013080991

PROPOSED DECISION

Administrative Law Judge Wilbert E. Bennett, State of California, Office of Administrative Hearings, heard this matter on November 7, 2013, in Sacramento, California.

Jason D. Lazark, Counsel, Bureau of Real Estate (Bureau) represented complainant Tricia D. Sommers, Supervising Special Investigator.

Attorney Frank M. Buda represented respondent Billy Sieng Phong, who was present throughout the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on November 7, 2013.

At the hearing, complainant amended the statement of issues by interlineation to correct typographical error, at page 3, line 13, by striking "conviction" and substituting therefor "convictions."

FACTUAL FINDINGS

1. On August 29, 2013, complainant filed the Statement of Issues in her official capacity. Complainant seeks to deny respondent's application for licensure based upon three felony convictions sustained by respondent in November, 1999 and July, 2001, and his failure to disclose two of those convictions on his license application.

2. On March 12, 2012, respondent submitted an application to the Department of Real Estate (now Bureau of Real Estate) for the issuance of a real estate salesperson license. This license application is pending and no license has been issued.

Prior Denial Actions

3. Effective November 14, 2002, in Case No. H-3654 SAC, the Bureau denied respondent's application for a real estate salesperson license based on his 1999 and 2001 felony convictions.

4. Effective November 10, 2005, in Case No. H-4287 SAC, the Bureau denied respondent's application for a real estate salesperson license based on his 1999 and 2001 felony convictions.

5. Effective March 8, 2012, in Case No. H-5679 SAC, the Bureau denied respondent's application for a real estate salesperson license based on his 1999 and 2001 felony convictions.

Criminal Convictions

6. On January 10, 2000, in the Sacramento County Superior Court, Case No. 99F08122, respondent was convicted, by nolo contendere plea, of violating Penal Code section 496, subdivision (a) (receiving stolen property), a felony. Pursuant to said conviction, respondent was placed on formal probation for a period of five years on certain terms and conditions, including service of 365 days in county jail, payment of restitution to victims in an amount to be determined by the probation officer, and payment of applicable fines and fees. Although the probation officer recommended restitution in the amount of \$160,465, it was later stipulated that restitution would consist of payment of \$7,000 to Bank of America and payment of \$240 to Hewlett Packard. On January 24, 2003, the court sentenced respondent to an additional 30 days in county jail for violating the terms and conditions of his probation by failing to notify his probation officer regarding his whereabouts. On September 25, 2007, respondent's motion to reduce his felony conviction to a misdemeanor was granted pursuant to Penal Code section 17, subdivision (b). On February 19, 2010, respondent's conviction was expunged pursuant to Penal Code section 1203.4.

7. The facts and circumstances underlying this conviction involved respondent's criminal conduct during the summer of 1999. During this time frame, respondent knowingly received stolen computers, laser printers, CD-ROM disks, and related equipment. He stored the stolen items, which were valued at over \$200,000, in four rented storage lockers and then sold some of the computers and equipment on the eBay internet website. He was then employed at eBay. This facilitated his involvement in the criminal enterprise. According to court documents filed in the criminal proceeding, "this crime was sophisticated and organized showing a well-organized criminal enterprise."

8. On July 25, 2001, in the Santa Clara County Superior Court, Case No. CC087168, respondent was convicted, by nolo contendere plea, of violating Penal Code section 484/487, subdivision (a) (grand theft), a felony, and of violating Penal Code section 459/460, subdivision (b) (second degree burglary), a felony; with an enhancement for theft in excess of \$50,000, pursuant to Penal Code section 12022.6, subdivision (a)(1). Pursuant to said conviction, respondent was placed on formal probation for a period of five years on certain terms and conditions, including service of nine months in county jail, payment of restitution in the amounts of \$33,000 to Alps Electronics, and \$46,560 to 3Com, and payment of applicable fines and fees.

9. The facts and circumstances underlying this conviction involved respondent's criminal conduct on or about July 21, 1999. On that approximate date, respondent participated in multiple commercial burglaries in San Jose, California, in which a group of people broke into business establishments and stole computers and related equipment. As noted in Finding 7 above, the stolen items were initially stored by respondent in storage lockers and then sold on eBay.

Failure to Disclose Convictions

10. Respondent, in his license application dated March 12, 2012, certified under penalty of perjury that the information in his application was true and correct. Despite this certification, respondent failed to provide the Bureau with correct information regarding his criminal history. He failed to disclose the 1999 Sacramento County conviction for violating Penal Code section 496, subdivision (a) (receiving stolen property), or the 2001 Santa Clara County convictions for violating Penal Code sections 484/487, subdivision (a) (grand theft), and Penal Code sections 459/460, subdivision (b) (second degree burglary). Instead, he incorrectly set forth a January 10, 2001 Sacramento County conviction for violation of Penal Code section 492, and a February 1, 2002 Santa Clara County conviction for violation of Penal Code section 496A. He omitted any reference to the Santa Clara County convictions for grand theft or second degree burglary, which he sustained on July 25, 2001.

11. Respondent testified, with reference to the conviction nondisclosures, that he did not realize that he was providing inaccurate information and was not attempting to mislead, but believed that he was making full conviction disclosure. That explanation strains credulity because surely respondent must have realized that he had suffered three convictions which he did not fully or correctly disclose and, specifically, that he did not disclose his grand theft or burglary convictions. He did not attribute his presentation of inaccurate conviction information to any type of confusion. His explanation may, therefore, be considered as a camouflage for respondent's reckless disregard for the truth. Additionally, respondent set forth incorrect conviction dates and an incorrect Penal Code section.

12. Although respondent's nondisclosure of two convictions was careless in a circumstance where care was warranted, that nondisclosure, standing alone, does not authorize license denial. While the ability to read, understand, and complete forms is an important attribute for a real estate licensee, the statutory scheme does not set forth negligent

completion of an application as a basis for license denial. Given the fact that respondent's license application had previously been denied, on three occasions, for the three felony convictions described above, his failure to disclose those convictions may be deemed attributable to extreme negligence, rather than an intention to mislead the Bureau. While it is virtually inconceivable that an applicant for a professional license would make an error of such magnitude, respondent's application history reflects similar errors on prior applications, none of which were previously cited as a ground for license denial. For example, in his August, 2004 application, he correctly disclosed the conviction date and Penal Code section violation associated with his Sacramento County conviction, while incorrectly disclosing the conviction date and leaving blank the Penal Code section violation associated with his Sacramento County conviction. In his May, 2010 application, he incorrectly disclosed the conviction date and Penal Code section violation associated with his Sacramento County conviction, while also incorrectly disclosing the conviction date and leaving blank the Penal Code section violation associated with his Santa Clara County conviction. The operative statutes, Business and Professions Code sections 480, subdivision (c) (knowingly making false statement of fact in application), and 10177, subdivision (a) (attempt to procure a license by fraud or misrepresentation or by making material misstatement of fact in application), by their terms, require false or fraudulent intent and are not invoked merely by the presentation of incorrect information.

Factors in Aggravation, Mitigation, or Rehabilitation

13. Respondent is 33 years old, married for four years, and the father of two children. His criminal activities took place within a three-month period in 1999, when he was 19 years old. He was employed by eBay as a customer support representative during the period of time when he engaged in the receiving stolen property and commercial burglary/grand theft offenses, and then sold the stolen property on eBay. Respondent served jail time in Sacramento County and after his release in September of 2000 was convicted and served time in Santa Clara County until his release in the summer of 2002. He completed court-ordered restitution for the Sacramento County offense in January of 2003, and completed that probation on January 9, 2005. He completed court-ordered restitution for the Santa Clara County offenses in October of 2012 (with a final payment of \$29,785), and completed that probation on November 27, 2012.

14. Since his release from incarceration, as noted in the Bureau's most recent denial decision, respondent has done the following: operated a cellular telephone company, operated his own restaurant business, which he sold in 2006, and worked as a floor manager at a casino in Marysville, California. After intermittent attendance for a number of years, he obtained a Bachelor's degree in Ministerial Studies from Epic Bible College in Sacramento, in June of 2012. In April of 2012, he obtained a ministry license from the Northern California-Nevada District Council of the Assemblies of God. Since January of 2013, he has served as lead pastor (an unpaid position) at the Epicenter Fellowship in Rosemont, California, a congregation of fewer than forty people with which he has been involved since 2001. He has conducted overseas and domestic missions.

Between 2008 and 2011, he worked as a real estate brokerage assistant at Titan Real Estate Services in Elk Grove, California. Mohammad Siddique, the owner of Titan Real Estate Services, has offered to serve as respondent's sponsoring broker should he be granted a restricted license. Respondent is amenable to the issuance of a restricted license.

15. Respondent expressed remorse for the conduct which resulted in his convictions. He testified that he sold over 200 stolen items on eBay during a three-month period. He acknowledged that he was motivated by greed, while stating, "I wouldn't do it today because the quick benefit doesn't outweigh the cost of the disappointments that other people would have." Although respondent testified that he no longer associates with the persons with whom he was convicted, he acknowledged on cross-examination that one of the persons involved in the crimes is a high school friend with whom he is still in contact and had, in fact, seen the day before the hearing.

16. Respondent presented several character witnesses in his own behalf, who know him personally and professionally. His witnesses included Huong Tran (a real estate salesperson), Nikki Nguyen (a real estate broker), and his wife Heidi Phong (a real estate broker). Each of the witnesses spoke highly regarding respondent's honesty and integrity. Mohammad Siddique is the owner of Titan Real Estate Services, where respondent was employed as a real estate brokerage assistant between 2008 and 2011, as mentioned in Finding 14 above. He has offered to serve as a sponsoring broker should respondent be issued a restricted license, with full knowledge of the legal and supervisory responsibilities attendant thereto. Respondent also offered supporting letters from Huong Tran, Mohammad Siddique, Quang Nguyen (worship pastor at Epicenter Fellowship), and Kwan Kim (co-pastor at Epicenter Fellowship). Two of the four letter writers expressed awareness of respondent's failure to disclose his 2001 grand theft and second degree burglary convictions on his license application.

17. The Bureau's most recent denial decision noted the following:
"[Respondent] has not yet completed payment of restitution ... did not provide complete and accurate information to the department on his most recent application for licensure ... and made flippant comments at hearing" Respondent now expresses remorse for his prior criminal conduct, while asserting his intention to be a good role model for his congregation and family. He has now completed court-ordered restitution and probation, but still has not provided complete and accurate information on his license application with respect to his conviction history. (The previous application deficiencies related to information concerning his employment history, property ownership, and past liens and judgments.)

18. Given the nature and gravity of his criminal offenses, which bear directly on the fiduciary responsibilities of a real estate licensee, respondent bears a heavy burden in demonstrating rehabilitation. The amount of evidence required to establish rehabilitation varies according to the seriousness of the conduct at issue. (*In re Menna* (1955) 11 Cal.4th 975, 987, 991.) Rehabilitative efforts require more than simply completing criminal probation. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to person's good behavior while on probation or compliance with terms of such probation

because such conduct is expected.].) At the prior hearing on his license denial (in 2011), respondent was flippant in addressing rehabilitation issues. At the hearing in this case, respondent acknowledged wrongdoing, thereby taking an essential step towards rehabilitation. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 [“Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation.”].) Thus, respondent has shown that he is on the road to rehabilitation. An issue remains as to the current state of respondent’s rehabilitation – whether it is still a journey in progress or a destination fully realized.

19. Respondent bears a heavy burden in demonstrating sufficient rehabilitation so that he may be issued a real estate license with due regard to public protection. Respondent’s three felony convictions resulted from repeated acts of dishonesty when he participated in commercial burglaries and knowingly received stolen property, as well as enormous violations of trust when he sold the stolen property on his employer’s website. While the nature of respondent’s offenses, involving dishonesty for personal gain, is troubling, equally troubling is the incomplete and inaccurate manner in which he presented his conviction history in his license application. To his credit, respondent supplemented his assurances of rehabilitation with evidence of attitudinal change from family members, friends, and professional acquaintances. (Cal. Code of Regs., tit. 10, § 2911, subd. (n)(2).) The fact that some of those witnesses and letter writers were aware of respondent’s failure to provide a complete conviction history on his license application, a failure which respondent steadfastly denies, is of concern. His conviction nondisclosures, although not authorizing license denial, reflect upon the state of his rehabilitation. While respondent’s conviction nondisclosures may not reflect false or fraudulent intent, such nondisclosures reflect a cavalier and reckless disregard for the truth, not in keeping with his obligation to make full disclosure to the Bureau. The public and the Bureau rely upon real estate salespersons to make disclosures that are complete and accurate. Similarly, the Bureau relies upon applicants to make disclosures on their applications that are complete and accurate. Furthermore, real estate salespersons are expected to act with honesty and integrity vis-à-vis their clients, the public, and the Bureau, which includes a duty to conduct due diligence and fully disclose all matters that legally must be disclosed.

20. The Bureau has developed criteria for evaluating whether an applicant has been rehabilitated since he committed the act(s) or suffered the conviction(s) constituting grounds for denying the application. (Cal. Code of Regs., tit. 10, § 2911.) The criteria relevant here are: (1) the passage of at least two years since the applicant’s most recent conviction; (2) successful completion of or early discharge from probation; (3) stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction; (4) significant or conscientious involvement in community or church programs designed to provide social benefits or to ameliorate social problems, and (5) change in attitude from that which existed at the time of the commission of the criminal acts in question. (Cal. Code of Regs., tit. 10, § 2911, subs. (a), (e), (h), (1),(n).)

21. The application of each of these criteria to respondent’s rehabilitation profile indicates sufficient rehabilitation from past criminal behaviors. Respondent’s most recent

conviction occurred over twelve years ago. He successfully completed probation for that conviction, although his five-year probation was extended until November of 2012, pending his belated compliance with the court-ordered restitution requirement. He has demonstrated a stable family life and significant and conscientious involvement in community or church programs designed to provide social benefits. The sum total of respondent's efforts reflects attitudinal change since the commission of the criminal acts in question, notwithstanding the troubling concern regarding the conviction nondisclosures on his license application.

22. As discussed below, cause exists to deny respondent's application based on his criminal convictions. However, upon consideration of all of the above factors, including the remoteness in time of the convictions and the overall showing of rehabilitation, respondent has established that it would not be contrary to the public interest to issue him a restricted license, under appropriate terms and conditions to assure public protection. Therefore, his application for a real estate salesperson license should be denied; provided, however, that he is issued a restricted license subject to the terms and conditions specified in the Order below.

LEGAL CONCLUSIONS

1. An application for a real estate license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, function, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 480, subd. (a)(1); 10177, subd. (b).) Respondent was convicted of receiving stolen property under circumstances involving the sale of the stolen property on the eBay internet website. (Findings 6 and 7.) Such a crime is deemed to be substantially related to the qualifications, functions, or duties of a real estate licensee. (See, Cal. Code of Regs., tit. 10, § 2910, subds. (a)(1) ["The fraudulent taking ... or retaining of ... property belonging to another person."], (a) (4) ["The employment of ... fraud, deceit, falsehood or misrepresentation to achieve an end."], and (a) (8) ["Doing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator"].) Respondent was also convicted of grand theft and second degree burglary under circumstances involving multiple commercial burglaries and the sale of stolen property on eBay. (Findings 8 and 9.) Each such crime is deemed to be substantially related to the qualifications, functions, or duties of a real estate licensee. (See, Cal. Code of Regs., tit. 10, § 2910, subds. (a)(1) ["The fraudulent taking ... or retaining of ... property belonging to another person."], (a)(4) ("The employment of ... fraud, deceit, falsehood, or misrepresentation to achieve an end."], and (a) (8) ["Doing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator"].) When respondent's three crimes are considered together, they are deemed to meet the "substantial relationship" requirement for license denial because they reflect "a pattern of repeated and willful disregard of law." (Cal. Code Regs., tit. 10 § 2910, subd. (a) (10).) Therefore, each of respondent's convictions constitutes separate cause for license denial pursuant to Business and Professions Code sections 480, subdivision (a) (1), and 10177, subdivision (b), individually and collectively.

2. Cause for license denial was not established under Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a).

3. As set forth in Factual Findings 13 through 22, respondent established that he has been sufficiently rehabilitated since engaging in the conduct constituting cause for license denial so that he may be issued a restricted license, under appropriate terms and conditions, including close supervision by a licensed real estate broker.

ORDER

Respondent Billy Sieng Phong's application for a real estate salesperson license is DENIED; provided, however, a restricted real estate salesperson license shall be ISSUED to respondent pursuant to Section 10156.5 of the Business and Professions Code. 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 said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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 this restricted license.

2. Respondent's employment as a real estate salesperson shall be limited to his employment by licensed real estate broker Mohammad Siddique, Real Estate Broker License No. 01372236.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three years have elapsed from the date of issuance of the restricted license to respondent.

4. 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, CA 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

*Not
Adopted*

Not
Admitted

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

Dated: December 9, 2013

Wilbert E. Bennett

WILBERT E. BENNETT

Administrative Law Judge

Office of Administrative Hearings

1 JASON D. LAZARK, Counsel (SBN 263714)
2 Bureau of Real Estate
3 P. O. Box 137007
4 Sacramento, CA 95813-7007

5 Telephone: (916) 263-8672
6 -or- (916) 263-8684 (Direct)

FILED

AUG 29 2013

BUREAU OF REAL ESTATE
By *[Signature]*

7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 In the Matter of the Application of)
11) H-6014 SAC
12 BILLY SIENG PHONG,)
13) STATEMENT OF ISSUES
14 Respondent.)
15)

16 The Complainant, TRICIA D. SOMMERS, a Supervising Special Investigator of
17 the State of California, for Statement of Issues against BILLY SIENG PHONG ("Respondent"),
18 is informed and alleges as follows:

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19 Respondent made application to the Bureau of Real Estate of the State of
20 California for a real estate salesperson license on or about March 12, 2012.

FAILURE TO DISCLOSE CONVICTION

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21 In response to Part D, Question 1 of said application, to wit: **HAVE YOU EVER**
22 **BEEN CONVICTED OF A MISDEMEANOR OR FELONY? CONVICTIONS EXPUNGED**
23 **UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU**
24 **MAY OMIT TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A**
25 **MISDEMEANOR OR FELONY,"** Respondent concealed and failed to disclose the convictions
26 described below in Paragraph 4.
27

1 CRIMINAL CONVICTIONS

2 3

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

9 4

10 On or about July 25, 2001, in the Superior Court, County of Santa Clara, State of
11 California, in case number CC87168, Respondent was convicted of a violation of Section
12 487(a) of the California Penal Code (grand theft), and Section 459/460(b) (burglary in the
13 second degree) with a California Penal Code Section 12022.6(a)(1) enhancement for theft in
14 excess of \$50,000.00, felonies which bear a substantial relationship under Section 2910, Title
15 10 of the Regulations, to the qualifications, functions, or duties of a real estate licensee.

16 PRIOR LICENSE DENIALS

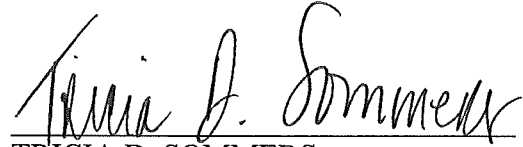
17 5

18 Effective November 14, 2002, in Case No. H-3654 SAC, before the then
19 California Department of Real Estate [OAH Case No. N-2002050061], the court finding that the
20 convictions set forth in paragraphs 3 and 4, above, bear a substantial relationship under Section
21 2910, Title 10 of the Regulations, to the qualifications, functions, or duties of a real estate
22 licensee, the application of Respondent for a real estate salesperson license was denied for
23 violation of Sections 480(a) and 10177 (b) of the Code.

24 6

25 Effective November 10, 2005, in Case No. H-4287 SAC, before the then
26 California Department of Real Estate [OAH Case No. N-2005060210], the court finding that the
27 convictions set forth in paragraphs 3 and 4, above, bear a substantial relationship under Section

1 authorize the issuance of, and deny the issuance of a real estate salesperson license to
2 Respondent, and for such other and further relief as may be proper in the premises.

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6 TRICIA D. SOMMERS
Supervising Special Investigator

7 Dated at Sacramento, California,
8 this 27th day of August, 2013.

9 DISCOVERY DEMAND

10 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Department
11 hereby makes demand for discovery pursuant to the guidelines set forth in the *Administrative*
12 *Procedure Act*. Failure to provide Discovery to the Bureau may result in the exclusion of
13 witnesses and documents at the hearing or other sanctions that the Office of Administrative
14 Hearings deems appropriate.