

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 30 2000

DEPARTMENT OF REAL ESTATE

* * *

Laurie A. Zain

In the Matter of the Application of)
DINH QUOC NGUYEN,)
Respondent.)

NO. H-7837 SF
OAH NO. N-2000060233

DECISION

The Proposed Decision dated July 27, 2000, 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 with the following exception:

Conditions "4" and "5" of the Order of the Proposed Decision are not adopted and shall not be part of the Decision.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon on September 20, 2000.

IT IS SO ORDERED

August 16

, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of
DINH QUOC NGUYEN,

Respondent.

No. H-7837 SF

OAH No. N 2000060233

PROPOSED DECISION

On July 10, 2000, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

James L. Beaver, Counsel, represented complainant.

Respondent Dinh Quoc Nguyen represented his own interests.

On July 10, 2000, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt ("Complainant"), in his official capacity as a Deputy Real Estate Commissioner of the State of California, made the statement of issues against respondent.

2. On January 11, 2000, respondent made application to the Department of Real Estate for a real estate salesperson license.

The Department of Real Estate has refused to issue respondent a real estate salesperson's license due to respondent's record of criminal convictions.

3. On June 16, 1992, in case number C9281732, the California Municipal Court for the County of Santa Clara, San Jose Facility, convicted respondent, on his plea of guilty, of violating Penal Code section 496 (Possession of Stolen Property), a misdemeanor.

The crime for which respondent was convicted involves moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee.

4. The facts and circumstances of the events that led to respondent's conviction pertain to respondent, at age 18 years, having been present as a driver of a parked car that stopped to allow another teenager to exit the vehicle in a parking lot and then break into another parked car. The other teenager stole from the other vehicle a car stereo amplifier, a Sony equalizer and a radar detector. After the theft, respondent's friend purportedly asked respondent to maintain possession of the stolen items because the friend's family refused to allow the teenager to have stereo equipment due to the boy's past acts of car theft.

5. As a result of the 1992 conviction, the Municipal Court sentenced respondent to two years of court probation and ordered him to pay a fine of \$100, plus a penalty assessment of \$170. The court also sentenced respondent to ten days of work furlough. The court commanded respondent to make restitution to his crime victim.

6. While on probation for the 1992 conviction as described in Factual Finding 3, above, on April 7, 1994, in case number C9475824, the Municipal Court for Santa Clara County convicted respondent, on his plea of nolo contendere, of violating Vehicle Code section 10851, subd. (a) [Unlawful Taking of a Motor Vehicle], a felony.

7. The facts and circumstances giving rise to respondent's criminal conviction in 1994 pertain to his arrest on February 1, 1994, due to his participation in taking an automobile and attempting to strip the vehicle of its car seats and other fixtures.

8. As a result of the 1994 conviction, the Superior Court held a sentencing hearing on May 23, 1994. The court placed respondent on formal probation for a three-year period. The court ordered respondent to complete six months of work furlough instead of jail time. Also, the court commanded respondent to pay \$200 into the California restitution fund. The court also directed respondent to pay \$681.77 in restitution to his crime victim.

Matters in Aggravation

9. Respondent offers self-serving explanations as to his involvement in past criminal activity that do not ring true. Respondent attributes his participation in the criminal misconduct due to bad influences. However, in the respective circumstances revolving around the 1992 crime and the 1994 misconduct, respondent was the oldest participant. In 1992, when he was 18 years old, respondent drove a car into a parking lot so that his 16-year-old friend could break into another car to steal various items of electronic equipment. Although he knew his 16-year-old friend had three stolen items (stereo amplifier, radar detector and stereo tuner), respondent allowed the 16-year-old boy to load the items into his car, respondent then drove the thief from the scene. After driving his friend home, respondent kept the stolen items in his possession.

In February 1994, when he was 20 years old, respondent's two acquaintances were each 19 years old. Respondent appears to have been more than a passive follower in the 1994 criminal activity.

10. Respondent wrote a letter, dated January 5, 2000, that he attached to his application for licensure. In the letter, respondent provides distorted accounts of his past criminal activity. The letter also contains hyperbole such as when he writes "I am preparing to take my masters (sic) in Finance from SJSU."¹ Respondent's letter must be viewed as his attempt to manipulate and to deceive through his omissions and exaggeration.

Matters in Mitigation

11. Complainant provides no evidence of past criminal convictions other than the matters set forth in Findings 3 and 6, above. Respondent insists that he has never been convicted of any other crimes in his life.

12. Respondent was relatively young when he committed the subject crimes. At the time of the 1992 crime, respondent was 18 years old. When he committed the second criminal in February 1994, respondent was 20 years.

Matters in Rehabilitation

13. Respondent has fulfilled the terms of his most recent criminal sentence. His last term of probation ended in 1997.

14. On June 17, 1997, the Superior Court for the County of Santa Clara issued an order under Penal Code section 1203.4 that directed a grant of respondent's petition for criminal records clearance.

15. On November 27, 1997, the Superior Court for Santa Clara issued an order under Penal Code section 17 that reduced the 1994 felony conviction to a misdemeanor.

16. Respondent has maintained gainful employment since the conviction in 1994.

17. Respondent's relationship with his family, including his three sisters and mother, reflects that he possesses the ingredients for personal stability. There is no evidence that respondent has neglected or abused his immediate family.

18. Respondent asserts that he volunteers his time as a teacher of the Vietnamese language to children in San Jose.

19. Respondent expresses remorse for his past criminal misconduct. Respondent compellingly relays an account of the life altering experience following his arrest in 1994 that involved his mother's deep sorrow and her proclamation that she had disowned him.

¹ Respondent has yet to sit for the aptitude test for enrollment in graduate school. As of July 10, 2000, respondent has no established date for being in a Master's degree course of study at San Jose State University.

20. On May 24, 1997, respondent received a Bachelor of Science degree in Business Administration (Marketing) through San Jose State University.

Respondent declares that he plans to pursue a Master's degree in business.

21. Respondent claims that he has taken real estate classes at the Chamberlain College with a hope of gaining a broker's license in the future.

Additional Matters

22. As a young boy, respondent immigrated to the United States in the 1970s. He was born in Saigon (now Ho Chi Minh City), Vietnam. He plans to apply for United States citizenship.

23. In his application for licensure, respondent disclosed the fact of his past convictions.

24. Mr. Billy Nguyen, a manager for an auto dealer who is respondent's friend yet not related to him, and Mr. David Rosas, a high school teacher, appeared at the hearing of this matter to express respective opinions that respondent has a good reputation in the community for honesty and integrity.

CONCLUSIONS OF LAW

1. Business and Professions Code section 480, subd. (a) provides that a license regulated by the Code may be denied on grounds that the applicant has "been convicted of a crime."

Business and Professions Code section 10177, subd. (b) sets forth that the Commissioner of Real Estate may deny the issuance of a license to an applicant who has "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... irrespective of an... order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his ... plea of guilty and to enter a plea of not guilty...."

2. Cause for disciplinary action against the license issued to respondent exists under Business and Professions Code sections 480(a) and 10177(b), by reason of the matters set forth in Findings 3 and 6.

3. The matters in mitigation, rehabilitation and aggravation as set forth in Factual Findings 9 through 24 have been considered in making the following order.

Respondent has successfully attained a majority of the criteria for rehabilitation as set out in Title 10, California Code of Regulations section 2911.

4. Respondent committed theft crimes that are prima facie cause to deny him a license as a real estate professional. Moreover, he shows a tendency to exaggerate and misconstrue facts. Nevertheless, with the passage of six years since his last conviction coupled with there not being evidence of any other instance of respondent engaging in criminal activities or other questionable behavior as well as his acts to rehabilitate himself, it would not be against the public interest to allow respondent to hold a restricted license for a period of three years.

ORDER

Respondent Dinh Quoc Nguyen'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 Dinh Quoc Nguyen shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6.

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 that 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 Dinh Quoc Nguyen shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three (3) years have elapsed from the date of issuance of the restricted license to respondent.

3. With the application for license, or with the application for transfer to a new employing broker, respondent Dinh Quoc Nguyen shall submit a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate that shall certify as follows:

(a) That the employing broker has read the Decision that is the basis for the issuance of the restricted license; and

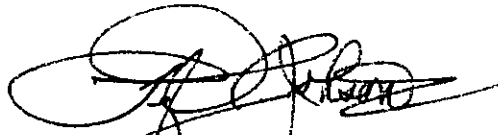
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

Not adopted

4. Respondent Dinh Quoc Nguyen's restricted real estate salesperson's license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting the suspension.

5. Pursuant to Business and Professions Code section 10154, if respondent Dinh Quoc Nguyen has not satisfied the requirements for an unqualified license under Code section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license that is subject to Code section 10153.4 until three years after the date of the issuance of the proceeding restricted license.

DATED: July 27, 2000



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN 15 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

DINH QUOC NGUYEN,

Case No. H-7837 SF

OAH No. N-2000060233

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 1515 Clay Street, Suite 206,
Oakland, CA 94612

on MONDAY, JULY 10, 2000, at the hour of 1:30 PM,
or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: June 15, 2000

DEPARTMENT OF REAL ESTATE

By JAMES E. BEAVER

Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)
7

FILED
MAY 26 2000

DEPARTMENT OF REAL ESTATE

Laurie G. Zari

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)	No. H-7837 SF
12 DINH QUOC NGUYEN,)	<u>STATEMENT OF ISSUES</u>
13 Respondent.)	
)	

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15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against DINH QUOC NGUYEN (hereinafter "Respondent"),
18 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 January 11, 2000.

23 II

24 Complainant, Les R. Bettencourt, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity.

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III

On or about June 16, 1992, in the Municipal Court of the State of California, County of Santa Clara, San Jose Facility, Respondent was convicted of the crime of Possession of Stolen Property in violation of Penal Code Section 496, a misdemeanor and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

IV

On or about April 7, 1994, in the Superior Court of the State of California, County of Santa Clara, Respondent was convicted of the crime of Take or Drive a Vehicle in violation of Vehicle Code Section 10851(a), a felony and a crime involving moral turpitude which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.


VI

The crimes of which Respondent was convicted, as described in Paragraphs III and IV, above, each constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the Code.

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WHEREFORE, Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of a real estate salesperson license to Respondent, and for such other and further relief as may be proper in the premises.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 17th day of May, 2000.