

FILED

JUL 26 2010

DEPARTMENT OF REAL ESTATE

By H. Mar

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)
ALLAN YUEN,)
Respondent.)

CASE NO. H-10793 SF
OAH NO. 2009110508

DECISION

The Proposed Decision dated June 25, 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. 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 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.

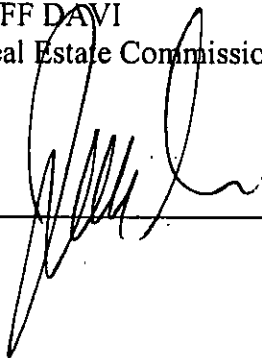
This Decision shall become effective at 12 o'clock noon on

AUG 10 2010

IT IS SO ORDERED

7-20-2010

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ALLAN YUEN,

Respondent.

Case No. H-10793 SF

OAH No. 2009110508

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on May 17, 2010.

Richard K. Uno, Real Estate Counsel, represented complainant E.J. Haberer II, Deputy Real Estate Commissioner, State of California.

Attorney Frank M. Buda represented respondent Allan Yuen, who was present.

The matter was submitted on May 17, 2010.

FACTUAL FINDINGS

1. Complainant E.J. Haberer II, Deputy Real Estate Commissioner, issued the statement of issues in his official capacity.
2. Respondent Allan Yuen's application for a real estate salesperson license was received by the department on April 2, 2009.
3. On April 28, 2004, in the United States District Court, Northern District of California, respondent was convicted of a felony violation of title 18 United States Code section 1029(a)(4) (possession of access device making equipment) a felony and a crime that is substantially related to the qualifications, functions and duties of a real estate licensee.

Respondent was placed on probation for five years on terms and conditions that included payment of \$47,042.93 in restitution. Respondent was also ordered: to participate in a drug and alcohol aftercare treatment program; not to open any lines of credit or incur any debt in excess of \$500 without permission of his probation officer; and, not to maintain "a position of fiduciary capacity," without the permission of his probation officer.

4. Respondent's offense occurred while he was employed as a front desk clerk at the Westin Hotel near the San Francisco International Airport. At the urging of his former partner Johnny Huynh and a woman named May Ngoc Trinh, respondent from February to March 2001 used a "skimmer" device provided by Trinh to capture credit card numbers of hotel patrons. Respondent received \$20 for each credit card number delivered to Trinh. His conduct led to losses of more than \$47,000 to the banks that had issued the credit cards.

The Westin Hotel soon became aware of respondent's conduct and contacted law enforcement officials. Hotel and Federal Bureau of Investigation officials interviewed respondent and he cooperated fully as they investigated the credit card skimming scheme. Respondent's cooperation assisted in the prosecution of Trinh and others involved in the scheme. Respondent was not arrested until August 2003 and he entered into a plea agreement that led to his conviction and terms of probation.

5. Respondent was in his twenties at the time of his offense. He abused alcohol and Ecstasy at the time; he engaged in substance abuse because he was in a bad relationship. He somehow believed that participating in Trinh's scheme would win the approval or affection of his former partner Huynh.

6. Respondent successfully completed the court ordered substance abuse program at Weyland Consultation Services in August 2005. The program included counseling sessions and urinalysis tests. Respondent has not used Ecstasy since 2001. He has not used alcohol for about two years. Respondent has not associated with Trinh or Huynh since 2001. He has had no further criminal convictions.

7. Respondent has complied with his probation and restitution obligations. In 2007, respondent requested early termination of probationary supervision. The United States Attorney had no objection to respondent's request. The United States Probation Officers assigned to respondent asked the United States District Court to grant respondent's request and wrote:

[Respondent] has been on probation since April 28, 2004. [Respondent] has reported to the probation officer as directed, submitted monthly supervision reports, and has not had any issues of non-compliance. The Court ordered restitution in the amount of \$47,042.93, to date, [respondent] has paid \$11,916.45, leaving a balance of \$35,126.48. [Respondent] has maintained stable employment, stable residence, and a stable environment. [Respondent] also successfully completed a drug and alcohol program and there are no signs of substance abuse. He is not believed to be a danger to the community and record checks indicate no new arrests, law enforcement contact or outstanding warrants.

In light of aforementioned [*sic*], this officer recommends that the court allow [respondent's] term of supervised release expire [*sic*] early with restitution owing be granted. [Respondent] has been advised that he needs to continue to make payments on his financial obligations.

On November 2, 2007, the United States District Court granted respondent early termination of supervision.

8. Respondent takes full responsibility for his criminal offense. He is extremely remorseful for that conduct. He recognizes that he engaged in disregard for the law, recklessness, and serious errors in judgment. More than six years have passed since his conviction and more than nine years have passed since his offense. He was granted early termination of supervision by the United States District Court, upon the recommendation of his probation officers, and with no objection from the United States Attorney. The evidence did not indicate that respondent is likely to re-offend; to the contrary, his offense appears to have been isolated and aberrational.

9. Respondent has made significant changes in his life that evidence a positive change of attitude from that which existed at the time of his criminal offense. He has completed three real estate courses and taken courses in design, computer, and merchandising. He attends the Chinese Independent Baptist Church in Oakland, where he volunteers as a translator.

10. Respondent has worked as an assistant to Henry Lee at Jack London Square Realty since 2008. Lee is a licensed real estate broker but is not the owner of Jack London Square Realty. Respondent informed Lee about his conviction when he began working for Lee. Respondent assists Lee with telephone calls, showing property, escrow paperwork, etc. Lee has no complaints about respondent, and considers him honest, reliable, trustworthy, and detail oriented. Lee plans to start his own company and is willing to serve as respondent's sponsoring broker.

11. Olivia Lee is a licensed real estate appraiser. She has known respondent since about 2005, when he worked for her at Viva Financial. Respondent told Lee about his conviction. She considers respondent to be very honest and truthful.

12. Franco Pang was respondent's manager at Viva Financial. In a February 15, 2010 letter to the department, Pang wrote:

I was aware of [respondent's] federal conviction. He did tell me what happened, and that he regretted much and felt remorseful for his crime. I felt that he deserved a chance to prove to the company that he has changed and has become an honest person.

And I was glad to say that, during the time working at Viva Financial, [respondent] was able to perform his job duties, and often times worked the extra miles. He was able to process all the paperwork in a professional and responsible way, and most importantly, he was organized and on top of everything.

Loan processing involves a lot of personal documents of our clients. [Respondent] conducted his job honestly and truthfully. Also he was able to get loans closed. All of us in the company and all the agents are very satisfied with him. [Respondent] was highly respected by the people who worked in the company. I encouraged him to get the Real Estate License in order to become a Sales Agent, because I think he is ready and professional enough to take his career to a higher level. Therefore, I highly recommend him to be a licensed Real Estate Sales Agent.

13. Respondent's aunt Anna Yuen and friend Paul Woo submitted letters of support that noted respondent's remorse for his crime, trustworthiness, education, and positive changes.

14. In a decision that took effect on September 5, 2005, the Real Estate Commissioner denied a previous application for licensure by respondent. Respondent was then still on probation and the commissioner determined that too little time had passed since his criminal conviction. Respondent's efforts toward rehabilitation have progressed significantly since that time, as discussed above.

LEGAL CONCLUSIONS

1. Under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), the commissioner may deny the issuance of a license to an applicant who has been convicted of a felony, or a crime substantially related to the qualifications, functions and duties of a real estate licensee.

2. Respondent's April 2004 conviction (Factual Finding 3) was a felony and was substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(1) (fraudulent taking), (a)(4) (use of fraud or deceit to achieve an end), and (a)(8) (unlawful act with threat of doing substantial injury to person or property). Respondent's conviction provides cause to deny his application.

3. The department's regulations set forth criteria for evaluating the rehabilitation of an applicant for a license. (Cal. Code Regs., tit. 10, § 2911.) More than six years have passed since respondent's conviction. His offense took place more than nine years ago. He cooperated with law enforcement officials. He complied with the terms of his probation and

is no longer on probation. He successfully completed a drug and alcohol program and no longer engages in substance abuse. He has worked to advance himself through employment and education. He was granted early termination of supervision. He has not had additional convictions. His offense appears to have been isolated and aberrational. He has demonstrated a positive change in attitude. He has taken courses to better himself, attends church, and provides volunteer service. He has been responsibly employed and has maintained stable residence. He has the support of his employer, business associates, family and friends. It would not be against the public interest to permit respondent to hold a real estate salesperson license on a restricted basis.

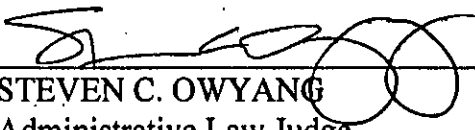
ORDER

The application of respondent Allan Yuen for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent 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 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 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 two 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 shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:
 - a. That the employing broker has read the decision which 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.
4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: respondent shall, within 18 months of the issuance of the restricted license, submit evidence satisfactory to the commissioner of successful completion, at an accredited institution, of a course in real estate practices and one 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 18 months after the date of its issuance. This 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 of the suspension.
5. Pursuant to Business and Professions Code section 10154, if respondent has not satisfied the requirements for an unqualified license under section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: June 25, 2010



STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-2380

FILED

NOV - 2 2009

DEPARTMENT OF REAL ESTATE

By H. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of
12 ALLAN YUEN,
13 Respondent.

No. H-10793 SF

STATEMENT OF ISSUES

14
15 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of
16 the State of California, for Statement of Issues against ALLAN YUEN, (herein "Respondent"),
17 alleges as follows:

18 1

19 Complainant makes this Statement of Issues in his official capacity.

20 2

21 On or about April 2, 2009, Respondent made application to the Department of
22 Real Estate of the State of California (herein "the Department") for a real estate salesperson
23 license.

24 3

25 On or about April 28, 2004, in the United States District Court, Northern District
26 of California, Case No. CR 03-0123 PJH, Respondent was convicted of violating Section 18
27 U.S.C. 1029(a) (4), (Possession of Access Device Making Equipment), a felony and a crime

1 which bears a substantial relationship under Section 2910, Title 10, California Code of
2 Regulations to the qualifications, functions or duties of a real estate licensee.

3 4


4 Respondent's criminal conviction, as described in Paragraph 3, above,
5 constitutes cause for denial of his application for a real estate license under Sections 10177(b)
6 and 480(a) of the Code.

7 PRIOR ADMINISTRATIVE ACTIONS

8 5

9 Effective September 5, 2005, before the Department of Real Estate in Case
10 No. H-9179 SF, the Commissioner previously denied Respondent's application for a real estate
11 salesperson license.

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

16
17
18 
19 E. J. HABERER, II
Deputy Real Estate Commissioner

20 Dated at Oakland, California,
21 this 30th day of October, 2009.