

FILED

JUL 20 2012

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By *S. Jones*

In the Matter of the Accusation of)
)
TIEN CONG NGUYEN,)
)
Respondent.)
_____)

NO. H-11224 SF
OAH NO. 2011120412

DECISION

The Proposed Decision dated June 19, 2012, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on AUG 09 2012.

IT IS SO ORDERED 7/19/2012

REAL ESTATE COMMISSIONER

Wayne S. Bell

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TIEN CONG NGUYEN,

Respondent.

Case No. H-11224 SF

OAH No. 2011120412

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on May 23, 2012.

Real Estate Counsel Truly Sughrue represented complainant E. J. Haberer II, Deputy Real Estate Commissioner, State of California.

There was no appearance by or on behalf of respondent Tien Cong Nguyen. Compliance with Government Code sections 11505 and 11509 having been established, the hearing proceeded as a default pursuant to Government Code section 11520.

The matter was submitted on May 23, 2012.

FACTUAL FINDINGS

1. Respondent Tien Cong Nguyen is licensed under the Real Estate Law (Business and Professions Code section 10000 et seq.¹) as a real estate broker. He has been licensed since 1998.
2. On October 7, 2011, acting in his official capacity as a deputy real estate commissioner of the State of California, complainant E. J. Haberer II issued an accusation against respondent. Respondent filed a notice of defense and this hearing followed.
3. At all times mentioned herein, respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the meaning of section 10131, subdivision (b).
4. On or about December 9, 2008, Walter Worth entered into a one-year property management contract with respondent. Respondent was doing business under the name

¹ All statutory references are to the Business and Professions Code.

“Global Property Management.” The agreement provided that respondent would manage Worth’s property at 7045 Via Barranca in San Jose, which was vacant at the time. Respondent agreed (among other things) to solicit prospective tenants for the property, collect rents, and deposit all rents collected into a trust account separate from respondent’s personal accounts. Under the agreement, respondent was to be paid one-half of the first month’s rent, and then 10 percent of the monthly rent thereafter. Respondent told Worth that he thought he would be able to get \$2,500 per month in rent for the property.

5. In mid-December 2008, respondent presented Mr. and Mrs. Wicklander to Worth as prospective tenants. Respondent told Worth that the Wicklanders would be good tenants, but that they only wanted to pay \$2,300 per month. Worth told respondent that \$2,300 was acceptable. Respondent presented Worth with a residential lease agreement that called for a monthly rent of \$2,300.

6. Respondent collected rents from the Wicklanders and did not deposit the rents into a trust account separate from his own personal accounts. Respondent deposited the Wicklanders’ rent checks into an account at Bank of America, owned by Global Property Management. The account title was not a trust account in the name of respondent. The account was not identified as a trust account on the signature card.

7. Between January 2009 and October 2009, respondent generally sent a monthly check to Worth in the amount of \$2,070, representing the monthly rent of \$2,300, minus respondent’s 10 percent management fee. (Some months were higher or lower, due to maintenance expenses.)

8. In October 2009, Worth learned that the Wicklanders were paying respondent \$2,500 per month, not \$2,300 per month. Respondent had falsely represented to Worth that the Wicklanders were paying \$2,300 per month. Prior to October 2009, Worth was unaware that respondent was charging the Wicklanders \$2,500 per month. Worth approached respondent about the discrepancy, but respondent ignored Worth’s inquiries. The property management agreement between Worth and respondent ended in December 2009.

9. Respondent did not have a license from the department to conduct real estate activities under the fictitious business name of Global Property Management.

10. Cecilia Yan, an auditor for the Department of Real Estate, was assigned to audit respondent’s property management activities. In a telephone conversation with respondent on December 29, 2009, respondent informed Yan that he had moved out of his main office address located at 5322 Arezzo Way in San Jose, and was residing in North Carolina. On February 2, 2010, respondent still listed 5322 Arezzo Way in San Jose as his main office address in department records.

11. No evidence of mitigation or rehabilitation was presented.

LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.

First cause of action

2. The commissioner may suspend or revoke the license of any licensee who has “[w]illfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law” (§ 10177, subdivision (d).)

3. Under section 10145, subdivision (a)(1), and under section 2832 of the commissioner's regulations,² a real estate broker who accepts funds belonging to others, which are not placed immediately into escrow or into the hands of the broker's principal, shall deposit those funds into a trust fund account maintained by the broker. Respondent deposited funds belonging to Worth into an account owned by Global Property Management that was not a trust fund. (Finding 6.) Cause exists under sections 10177, subdivision (d), and 10145, subdivision (a)(1), and section 2832 of the commissioner's regulations, to suspend or revoke respondent's license.

4. Under section 10159.5, and section 2731 of the commissioner's regulations, a real estate broker may not use a fictitious name to conduct any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name. Respondent conducted activities for which a real estate license is required under the unlicensed fictitious name of Global Property Management. (Findings 4, 6 & 9.) Cause exists under section 10177, subdivision (d), and section 2731 of the commissioner's regulations, to suspend or revoke respondent's license.

5. Under section 10162, every real estate licensee “shall have and maintain a definite place of business in the State of California which shall serve as his office for the transaction of business.” Under section 2715 of the commissioner's regulations, a real estate broker must maintain on file with the commissioner the address of his principal place of business; whenever there is a change in the location or address of the principal place of business, the broker “shall notify the commissioner thereof not later than the next business day following the change.” Prior to December 29, 2009, respondent moved from his business address of 5322 Arezza Way, San Jose, and, on February 2, 2010, respondent had not informed the commissioner of that change. (Finding 9.) Cause exists under sections 10177, subdivision (d), and 10162, and section 2715 of the commissioner's regulations, to suspend or revoke respondent's license.

² The commissioner's regulations are found at title 10 of the California Code of Regulations.

Second cause of action

6. The commissioner may suspend or revoke the license of any licensee who, in the course of performing licensed activities, makes any substantial misrepresentation (§ 10176, subd. (a)); engages in any conduct that constitutes fraud or dishonest dealing (§ 10176, subd. (i)); takes a secret or undisclosed profit (§ 10176, subd. (g)); or engages in any other conduct that constitutes fraud or dishonest dealing (§ 10177, subd. (j)). Respondent falsely represented to Worth that the Wicklanders were paying \$2,300 per month in rent when, in fact, they were paying respondent \$2,500 per month in rent. (Findings 5, 7 & 8.) Cause exists under these provisions, and under section 10177, subdivision (d), to suspend or revoke respondent's license.

7. The accusation alleges that, by virtue of his misrepresentation to Worth, respondent is subject to discipline for negligence or incompetence under section 10177, subdivision (g). The evidence does not establish, however, that respondent's misrepresentation was due to negligence or incompetence. No cause exists under section 10177, subdivision (g), to take disciplinary action against respondent's license.

Disciplinary considerations

8. The purpose of license discipline is not to punish the licensee, but to protect the public from incompetence and lack of integrity among those practicing in a licensed profession. (*Murrill v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 712.) Honesty and integrity are essential qualities of a real estate licensee. The public is entitled to believe that a real estate broker has demonstrated those qualities in order to obtain his license. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 177-178.)

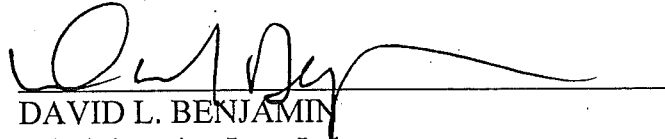
9. In addition to violating other provisions of the Real Estate Law, respondent engaged in fraud in the handling of Worth's property management account. No evidence of mitigation or rehabilitation was presented. On this record, respondent lacks the honesty and integrity expected of real estate licensees. It would be contrary to the public interest to allow respondent to retain his broker license, even on a restricted basis.

10. At hearing, complainant requested an order requiring respondent to make restitution to Worth as a condition of license reinstatement. No authority was cited for the issuance of such an order at this time. Complainant's request is denied without prejudice to the commissioner's right to impose such conditions upon respondent's reinstatement as he or she may be authorized to impose.

ORDER

All licenses and licensing rights under the Real Estate Law of respondent Tien Cong
Nguyen are revoked.

DATED: June 19, 2012

A handwritten signature in black ink, appearing to read "David Benjamin", written over a horizontal line.

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings