

FILED

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

DEC 11 2015

BUREAU OF REAL ESTATE

By R. dew

In the Matter of the Application of)	CalBRE No. H-11881 SF
)	
HUI-WEN HSIAO,)	OAH No. 2015090019
)	
Respondent.)	

DECISION

The Proposed Decision dated November 12, 2015, 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. A 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 a petition for removal of restrictions is filed, 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 attached hereto.

JAN 04 2016

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

IT IS SO ORDERED 12/11/2015

REAL ESTATE COMMISSIONER



WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

HUI-WEN HSIAO,

Respondent.

Case No. H-11881 SF

OAH No. 2015090019

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on October 22, 2015, in Oakland, California.

Truly Sughrue, Counsel, represented complainant, Robin S. Tanner, a Supervising Special Investigator of the State of California.

Respondent Hui-Wen Hsiao represented himself and was present throughout the administrative hearing.

The record was left open until November 6, 2015, for respondent to submit character references. The character references were timely received, marked for identification as Exhibits D, E, F, G and H, and admitted as administrative hearsay.

The matter was submitted for decision on November 6, 2015.

FACTUAL FINDINGS

1. Robin S. Tanner made the statement of issues in her official capacity as a Supervising Special Investigator of the State of California.
2. Hui-Wen Hsiao (respondent) applied to the Bureau of Real Estate (bureau) for a real estate salesperson license on August 11, 2014.

Failure to Disclose Criminal History

3. In response to Part D, Question 1 of the application, which asks whether respondent had ever been convicted of any violation of law, including state and federal misdemeanor and felony convictions, respondent answered, "No."

Criminal History

4. On April 15, 1996, in the Superior Court of California, County of San Mateo, respondent was convicted of violating Penal Code section 484 (petty theft), a misdemeanor, and admitted an enhancement pursuant to Penal Code section 490.5 (taking merchandise from a merchant). Imposition of sentence was suspended and respondent was placed on summary probation for a period of 18 months on conditions that included paying a fine of \$525. As of May 3, 1996, the fine was paid in full; respondent completed his probation in October 1997.

The offense occurred on March 15, 1996, at a Costco Wholesale outlet store. Respondent was observed removing computer discs (CD's) from packaging and concealing them in a duffel bag, then leaving the store without paying for the CD's.

5. On November 21, 1997, in the Superior Court of California, County of Alameda, respondent was convicted of violating Penal Code section 484, a misdemeanor. Imposition of sentence was suspended and respondent was placed on probation for a period of two years and ordered to pay a fine. Respondent has paid the fine and completed probation.

The offense occurred on October 12, 1997, when respondent attempted to leave Fry's Electronics with equipment valued at approximately \$30, without paying for it.

Respondent's Evidence

6. Respondent accepts full responsibility for his criminal history. He agrees that he used very poor judgment when he committed the two petty thefts. At the time his two convictions occurred, he had recently moved to California with his wife and two young sons and was under a lot of financial pressure. He learned from his error in judgment and has not had another contact with law enforcement since 1997.

7. Respondent also accepts responsibility for failing to disclose the convictions on his application for licensure. It has been 18 years since his most recent conviction and it is a bad memory that he tries to suppress; reliving the memory is difficult. Respondent makes no excuses for his lapse in failing to report the two charges.

8. Respondent is originally from Taiwan. He earned a bachelor's degree in architecture in Taiwan in 1983, and his master's degree in 1985. In 1989, he moved to the United States to attend Harvard University. In 1991, respondent earned a master's degree in urban design from Harvard.

9. Respondent moved to the Bay Area in the early 1990's. He worked for a design firm for a period of time, but was laid off. In 1997, respondent was hired by Hoover Associates, an architecture firm located in Palo Alto, California. He passed his architecture examinations in 2002, and became a licensed architect and was promoted at Hoover Associates. In 2012, respondent left Hoover Associates to open his own architecture firm, ArchiRender. Respondent continues to practice architecture, and often works on projects with his former colleagues at Hoover Associates.

10. In 2003, respondent met the requirements for trainee licensing as a real estate appraiser. He worked for one year as an appraiser trainee, but stopped pursuing this work because he was unable to devote enough time to it.

11. Respondent's architecture and appraisal licenses have never been disciplined.

12. Respondent would like to supplement his income as a real estate salesperson and feels his architecture skills would be an asset.

13. Respondent is married and has two sons, ages 23 and 25.

14. Respondent submitted several character reference letters. Richard Campbell, AIA, the chief executive officer of Hoover Associates, reports that respondent joined Hoover Associates in 1997 as a senior designer and was made a partner in 2005. Campbell confirmed that respondent has retained a professional relationship with Hoover Associates since he established his own firm. Campbell has worked with respondent for 18 years and considers him to be an outstanding representative of the architecture profession.

Rodney E. Humble has worked with respondent for 18 years and reports that he is extremely impressed by his many outstanding qualities. Humble states that respondent is professional, self-motivated, and very knowledgeable regarding building types and code compliance issues. Humble believes that respondent would be an asset to the real estate community.

Jason J.C. Louie, S.E., is a licensed structural engineer and a principal at Louie International Structural Engineers in San Francisco. Louie reports that he has worked with respondent on many commercial projects over the past 15 years. He considers respondent to be a man of integrity, and finds him very knowledgeable in real estate development.

Regina Kao wrote a letter in support of respondent's licensure dated October 22, 2015. Kao is a real estate salesperson with Coldwell Banker. She has worked with respondent on numerous renovation projects since 2007. Kao considers respondent to be detail-oriented, professional and knowledgeable; she believes he would make a skilled real estate salesperson.

Respondent's sister-in-law, Cecilia Ho, wrote a character reference for respondent dated October 22, 2015. Ho has known respondent for over 20 years. Ho is a real estate salesperson in California. She has worked with respondent on several appraisal reports, and has sought his advice on real estate projects. Ho has encouraged him to become a real estate salesperson and highly recommends him.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a)(1), authorizes the bureau to deny a license to an applicant who has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the denial of a license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions and duties of a real estate licensee.

2. California Code of Regulations, title 10, section 2910, sets forth criteria for determining whether a crime is substantially related to the qualifications, functions and duties of a real estate licensee. A crime is deemed to be substantially related to the licensed activity if it involves the fraudulent taking, obtaining, appropriating or retaining of funds belonging to another person (subd. (a)(1)), the employment of fraud or deceit to achieve an end (subd. (a)(4)), committing an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator (subd. (a)(8)), or conduct that demonstrates a pattern of repeated and willful disregard of the law (subd. (a)(10)).

Respondent's petty theft convictions are substantially related to the qualifications, functions and duties of a licensee. Cause therefore exists to deny respondent's application for licensure pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b).

3. Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a), authorize the bureau to deny a license to an applicant who has made a material misstatement on the application. As set forth in Factual Finding 3, respondent failed to disclose his criminal history on the application. Cause to deny the application therefore exists pursuant to Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a).

4. California Code of Regulations, title 10, section 2911, sets forth criteria for evaluating whether an applicant has been sufficiently rehabilitated. Respondent has satisfied many of the criteria. Respondent's most recent conviction took place in 1997, 18 years ago (passage of two years identified in subd. (a)). Respondent has completed his grants of probation and paid the fines that were imposed (subs. (e) and (g)). Respondent has a stable family life (subd. (h)). Respondent has completed formal and vocational education, becoming a licensed architect and licensed appraiser (subd. (i)). Respondent formed long-term business

relationships following his criminal conduct (subd. (m)). Finally, he has demonstrated a change in attitude from that which he had during the time he was involved in criminal behavior, as shown by his testimony, the length of time during which he has had no criminal conduct, and the letters he presented from friends and business associates (subd. (n)). (Factual Findings 6 through 12.)

5. Respondent's criminal history occurred many years ago when he was struggling to support his family in a new country. He has successfully turned his life around and it appears unlikely that he will return to criminal behavior. Respondent has been a contributing member of society for many years and has the support of those who have known and worked with him for nearly 20 years. Respondent appeared sincere when he apologized for failing to disclose what is for him a painful and distant memory. He took full responsibility for his misdeeds. Respondent has established that he is sufficiently rehabilitated so that it would not be contrary to the public interest to grant him a restricted real estate license.

ORDER

Respondent Hui-Wen Hsiao'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 the 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 the restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for removal of any of the conditions, limitations or restrictions of a 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 Bureau 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 shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137007, Sacramento, CA 95813-7007. 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 a written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: November 12, 2015

DocuSigned by:
Jill Schlichtmann
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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings