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DEPARTMENT OF REAL ESTATE

By

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of: VIVIAN HOANG,	Case No. H-5550 SAC OAH No. 2011040464
In the Matter of the Notice of Intent to Issue Bar Order Against: VIVIAN HOANG, Respondent.	Case No. H-5568 SAC OAH No. 2011080247

DECISION

The Proposed Decision dated October 14, 2011, 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.

This Decision shall become effective at 12 o'clock noon on DEC 12 2011.

IT IS SO ORDERED 11/21/11

BARBARA J. BIGBY
Acting Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: VIVIAN HOANG,	Case No. H-5550 SAC OAH No. 2011040464
In the Matter of the Notice of Intent to Issue Bar Order Against: VIVIAN HOANG, Respondent.	Case No. H-5568 SAC OAH 2011080247

PROPOSED DECISION

This matter was heard before Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 16, 2011, in Sacramento, California.

Jason D. Lazark, Counsel, Department of Real Estate (department), represented complainant Tricia Sommers, Deputy Real Estate Commissioner of the State of California.

Vivian Hoang (respondent) was present and was represented by Jeffrey S. Kravitz, Attorney at Law.

Evidence was received, and the matter was submitted for decision on September 16, 2011.

FACTUAL FINDINGS

1. On May 21, 2004, the department issued Real Estate Salesperson License Number S01434614 to respondent. Respondent's license expires on July 26, 2012, unless renewed or revoked.

2. On January 26, 2011, complainant made and filed the Accusation in her official capacity. Complainant seeks to revoke respondent's real estate salesperson license based on her felony criminal conviction. On February 23, 2011, respondent filed a Notice of Defense to contest the Accusation. On March 21, 2011, Real Estate Commissioner Jeff Davi

made and filed the Notice of Intention to Issue Bar Order. On March 30, 2011, respondent filed a request for hearing on the Notice of Intention to Issue Bar Order. The matters were consolidated and the hearing was held on September 16, 2011.

Respondent's Conviction

3. On May 7, 2010, in the Superior Court of California, County of Sacramento, in the matter entitled *People of the State of California v. Vivian Hoang et al.*, Case No. 07F09023, respondent was convicted, upon a plea of nolo contendere, of violating Health and Safety Code section 11370.6, subdivision (a), possession of money or negotiable instruments in excess of $100,000 obtained from the sale, transportation or manufacture of a controlled substance, a felony. Imposition of sentence was suspended, and respondent was placed on five years formal probation, upon the following terms: participate in the Alternative Sentencing Program for 246 hours, to be completed by January 1, 2011, in lieu of 365 days county jail, with credit for time served of 162 days; pay fines and fees of approximately $499.51; submit person and property to search and seizure by law enforcement; do not use, handle, or possess marijuana, dangerous drugs, or controlled substances unless lawfully prescribed; do not associate with known or reputed users of marijuana, dangerous drugs, or controlled substances or be in places where narcotics or dangerous drugs are present; do not possess any firearms or ammunition; and other standard terms and conditions.

4. The facts and circumstances of respondent's conviction are that, on September 19, 2007, after a lengthy investigation by the Elk Grove Police Department, 21 search warrants were served at various residences in Elk Grove, Sacramento, and Galt. As a result of the searches, 6,855 marijuana plants, $200,000 in cash, over 20 pounds of processed marijuana, two guns, and 10 vehicles were seized. Fifteen people, including respondent, were arrested for the cultivation of marijuana, sales of marijuana, and conspiracy for the cultivation of marijuana.

Two of the homes involved in the investigation in Elk Grove had "For Sale" signs in the front yards. Respondent was the realtor listing the properties for sale. Police conducted a further investigation of respondent, and found that she owned two other homes[1] in Elk Grove. Police went to those homes, and noticed that the homes were "closed up tight" with the shades drawn. Some of the window screens on both houses were heavily clotted with dirt. Police believed that those homes were also involved in "marijuana grows." The Sacramento Municipal Utility District (SMUD) conducted a power usage measurement on the two homes owned by respondent. The readings at the power boxes were anywhere from 10 to 30 times higher than the readings at the homes. SMUD and the police determined that the power usage readings were consistent with power theft, commonly used for the cultivation of indoor marijuana grows. Police then served a search warrant at the Sacramento Association of Realtors and obtained a listing of respondent's recent home sales

[1] Respondent owned the two homes located on 9836 Wyland Drive and 9350 Quarter Ranch Road in Elk Grove. She rented both homes to other individuals who were involved in the marijuana grow operation.

and current sales listings. The recent sales listing revealed that respondent sold 18 homes in Sacramento, Elk Grove, and Galt. Police drove by the homes that respondent sold, and discovered that nine of the 18 homes showed indications of indoor marijuana grows, such as the sound of loud fans at the front door, excessively dirty window screens, window blinds shut tight, and high power readings. After service of search warrants on many of the homes that respondent sold, listed, or owned, including her current residence at the time, respondent and many others were arrested and taken to the Elk Grove Police Department for interviews. Respondent was criminally charged and subsequently convicted.

Prior to respondent's conviction, on October 11, 2007, police went to Wells Fargo Bank at 8872 Bond Road in Elk Grove, and served a search warrant for safe deposit box number 168 belonging to respondent. The keys to the safe deposit box were found during the search of respondent's home at 9852 Pipit Way in Elk Grove. Upon opening the safe deposit box, police found $14,000, consisting of 40 $100 bills, 499 $20 bills and two $10 bills. Police also had a key for safe deposit box number 315, which belonged to respondent's mother. Police obtained a search warrant for safe deposit box number 315, and served it the next day. When police opened the box, they found $70,000, consisting of 530 $100 bills, 120 $50 bills, and 550 $20 bills. The address listed for safe deposit box number 315 was 9836 Wyland Drive in Elk Grove, a rental home owned by respondent and used by her tenants for a marijuana grow operation.

Matters in Aggravation, Mitigation, or Rehabilitation

5. Respondent admitted to and was sorry about her conviction, but claimed that she had no knowledge or connection to the tenants growing marijuana in her two rental homes or at the homes that she sold. She asserted that did not knowingly receive money from the sale of marijuana. She met her tenants from previous real estate customers whose homes were also used for marijuana grows. She firmly denied being involved in the marijuana grow operation, only finding out about the operation after her arrest. Respondent regrets that she was not careful in selecting her tenants. Respondent did not explain how she obtained the $14,000 kept in her safe deposit box. With regard to her mother's safe deposit box, respondent explained that in her culture, elderly persons do not believe in banks. Ironically, respondent placed the $70,000, her parent's life savings, in a safe deposit box at Wells Fargo Bank. The record of conviction of the crime is conclusive evidence of the fact that the conviction occurred, but only of that fact. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. (Bus. & Prof. Code, § 493.) However, such an inquiry into the surrounding circumstances does not authorize respondent to attack her convictions or to relitigate them in this forum. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

6. Many of respondent's real estate clientele are from the Vietnamese community. At the time of the police investigation, respondent sold homes to Vietnamese clients that were referred to her by her boyfriend at the time, Vincent Phung (Phung). Respondent claimed that she did not know what was going on in the homes after she sold them. Phung was observed by police visiting several of the homes respondent sold as well as

respondent's rental homes at the time, and was observed visiting respondent's residence at 9852 Pipit Way in Elk Grove. Respondent believed that Phung was a day trader in the stock market, and that is how he made income. Prior to her arrest, Phung gave respondent $10,000 to visit Vietnam. She did not question where he got the money. She thought Phung was being nice to her. Phung and many others were also arrested and criminally charged as a result of the marijuana grow operation in Elk Grove.

7. Two witnesses testified on respondent's behalf. Nikki Nguyen (Nguyen) testified that she and respondent worked for the same company in 2003. She and respondent have been friends for a long time. Nguyen testified that she became aware of respondent's conviction last year. Nguyen stated that respondent was at a vulnerable stage in her life at the time, and was having relationship problems. Respondent became friends with a client, who introduced respondent to another group of people. They were not good people, and they were responsible for getting respondent into trouble. Nguyen stated that respondent is very remorseful for what happened. Nguyen stated that she and respondent were top producing agents together, and that she has no knowledge of complaints or ethical violations filed against respondent. Nguyen is willing to employ respondent as a real estate salesperson if she is asked by respondent. Nguyen admitted that she does not know the details of the facts and circumstances of respondent's conviction.

8. Mohammad Siddique (Siddique) also testified on respondent's behalf. Siddique owns and operates Titan Real Estate Services. He has been a real estate broker since 2004, and a real estate salesperson since March 2003. Respondent began working for Siddique as a real estate salesperson in 2008, and Siddique still acts as respondent's licensed broker. Siddique did not receive any complaints regarding respondent's conduct as a real estate salesperson, and he did not observe respondent to be unethical. Siddique knows that respondent has been convicted of a crime, and is willing to continue to employ respondent. He feels that everyone deserves a second chance. Siddique has known respondent for many years, and he stated that it is out of character for her to do something like that. Siddique believes that respondent will be fine with confidentiality and trust with customers. Siddique learned of the facts and circumstances of respondent's conviction from watching the news on the television.

9. Respondent is a single mother with one son, who is presently 13 or 14 years old. She is the sole support for her son and her elderly parents.

10. Respondent is an active member of Emmanuel Church English Ministry in Sacramento. She organizes and assists with youth events, bible study, car washes, and the like. Respondent also performs volunteer work once a month at a senior care home in the Lemon Hill neighborhood in Sacramento. She recently began volunteering as a Vietnamese translator at Sutter Memorial and Shriner's Hospitals in Sacramento. She obtained a Certificate of Training from Reedley City College, showing that she had satisfactorily completed four hours of Healthcare Interpreting Training on June 6, 2009.

11. Respondent completed correspondence/internet courses entitled "Fair Housing" and "Agency," and passed the final examinations with a score of 75 percent for the continuing education amount of three clock hours for each course on July 26, 2008. Respondent completed a correspondence/internet course entitled "Trust Funds," and passed the final examination with a score of 75 percent for the continuing education amount of three clock hours on July 27, 2008. Respondent completed a Real Estate Practices Course for continuing education on November 12, 2005, and a Real Estate Property Management Course for continuing education on November 17, 2005. Respondent has not taken or completed any further continuing education courses since her conviction on May 7, 2010.

12. Respondent graduated with a Bachelor of Science degree in Business Administration, with a concentration in Management Information Systems, from California State University, Sacramento (CSUS), in 2003. She was on the Dean's Honor Roll, with a grade point average of 3.64. In 1996, respondent studied for three years at the Economic University in Saigon, Vietnam. Respondent has maintained steady employment in the real estate business since her graduation from CSUS. She worked as a real estate sales manager for Metroville Real Estate from 2008 to March 2011. Since 2008, she has also been an interpreter for Interlingva, Inc., translating in English, Vietnamese and Mandarin for clients involving matters related to health care.

13. On December 21, 2010, the Superior Court of California, County of Sacramento, Alternative Sentencing Program, issued a Certificate of Completion for respondent, showing that respondent completed 246 hours while enrolled in the program.

14. Respondent also holds a manicurist license from the Board of Barbering and Cosmetology. There has been no discipline against this license.

15. Respondent submitted letters of recommendation which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).[2] In addition to testifying on respondent's behalf, Nguyen and Siddique wrote letters. In her signed and undated letter to the department, Nguyen, a real estate broker and Chief Executive Officer of WinWin Real Estate Company, wrote that she and respondent have been good friends and colleagues since working together at Coldwell Banker Real Estate. Nguyen characterized respondent as a kind and trustworthy person that struggled to finish college and began a new career in real estate. Respondent is dedicated to her son, and is working to save money to send her son to a good college. Nguyen knows little about all of the facts and circumstances of respondent's conviction, and related that respondent is extremely embarrassed about making the mistake of renting to tenants without credit or background checks. Nguyen further characterized respondent as a very good realtor with

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[2] Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions ...."

excellent negotiating and listening skills. Nguyen strongly believes that respondent has learned her lesson.

In his signed and dated letter of August 25, 2011, Siddique, characterized respondent as a hard worker and team player that teaching other agents to sell property. Siddique stated that respondent is active in her community and a member of the local church. Respondent is a successful real estate sales agent with excellent sales volume. Unlike Nguyen, Siddique knew of the general facts and circumstances of respondent's conviction by watching television. He was surprised to learn of her conviction, which is so out of character for her. After her conviction, he had not heard from respondent for several months. She then called Siddique and asked to join his company. Siddique was hesitant at first, but ultimately decided to hire respondent because he believes respondent is a good person who made a mistake, and she deserves a second chance to get her life back together. Siddique is thankful that respondent is working for his company.

Both letters confirm the testimony that Nguyen and Siddique provided at hearing. In this regard, they are given equal weight to the testimony provided at hearing.

16. Respondent will be on probation until May 2015. She is currently making payments of $150 per month on her court fines and fees. The remaining balance due is $1,116.51[3]. Respondent has not had her conviction expunged pursuant to Penal Code section 1203.4.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Business and Professions Code section 480, subdivisions (a)(1) and (3)(B) state:

> (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
>
> (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. [¶]...[¶] The board may

[3] The court assessed additional fees and fines than what was originally assessed in Finding 3.

deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

[¶]...[¶]

(3)(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

2. The department may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. (Bus. & Prof. Code, § 490, subd. (a).)

3. Business and Professions Code section 10177, subdivision (b), states, in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following ...

[¶]...[¶]

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

4. California Code of Regulations, title 10, section 2910, subdivisions (a)(7) and (a)(8) state:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall

be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

[¶]...[¶]

(7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

Substantial Relationship

5. Respondent's conviction involved an unlawful act with the intent of conferring a financial or economic benefit upon herself, in that respondent profited from the sales of homes used for marijuana growing operations. Therefore, her conviction bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee as set forth in California Code of Regulations, title 10, section 2910, subdivision (a)(8).

6. Respondent's conviction involved the possession of money in excess of $100,000 obtained from the sale, transportation, or manufacture of a controlled substance, to wit: marijuana. Her conviction did not willfully involve the failure to comply with a statutory requirement before engaging in a business or course of conduct, in that respondent's conviction did not involve possessing, growing or using marijuana for medicinal purposes, for which there is a process to obtain marijuana legally. Therefore, respondent's conviction does not bear a substantial relationship to the qualifications, functions, or duties of a real estate licensee as set forth in California Code of Regulations, title 10, section 2910, subdivision (a)(7).

Cause for Revocation

7. Cause for revocation of respondent's real estate license was established pursuant to Business and Professions Code sections 10177, subdivision (b), and 490, subdivision (a), by reason of Findings 3 and 4, and Legal Conclusion 5. Respondent's conviction is substantially related to the qualifications, functions and duties of a real estate licensee. As a result, grounds exist to revoke respondent's license under Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

8. Cause for revocation of respondent's real estate license was established pursuant to Business and Professions Code sections 10177, subdivision (b), and 490, subdivision (a), by reason of Findings 3 and 4, in that respondent was convicted of a felony. As a result, grounds exist to revoke respondent's license under Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

Rehabilitation

9. The determination whether a person is presently fit for licensure should be made only after consideration of the conduct of the licensee and consideration of any factors introduced in justification, aggravation or mitigation. "The licensee, of course, should be permitted to introduce evidence of extenuative circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation". (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747). The criteria to evaluate the rehabilitation of a license applicant, after a criminal conviction, are set forth in California Code of Regulations, title 10, section 2911.[4]

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[4] California Code of Regulations, title 10, section 2911, states:

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)
(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.
(c) Expungement of criminal convictions resulting from immoral or antisocial acts.
(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
(e) Successful completion or early discharge from probation or parole.
(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.
(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

10. Considering the Department's rehabilitation criteria, it has been one year and five months since respondent's felony conviction. Respondent will be on probation for her conviction until May 2015. Respondent has not expunged her conviction. Respondent is currently making $150 per month payments on her court fees, fines, and restitution. As of September 7, 2011, the remaining balance due was $1,116.51.

11. Respondent's family life appears stable, however no family members testified to confirm that a stable home exists, or that respondent has a family support system in place to assist her in leading a law-abiding life. Respondent is currently not enrolled in, nor has she completed any formal or vocational training courses for economic self-improvement since her May 2010 conviction. She is actively involved in volunteer community services, and church activities. While she has acknowledged that she was convicted of a crime, she was adamant that she was not involved in the marijuana grows that took place in nine of the homes that she sold, in addition to her two rental homes.

(i) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.
(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.
(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.
(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.
(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

12. Respondent will be correcting her business practices by carefully screening future tenants, and will exercise caution with those whom she associates with in the future. This was a lesson of a lifetime for respondent, and it caused her embarrassment. What respondent fails to recognize is the effect her conduct had on her neighbors, her family, her profession, and the public. She looked the other way when she profited from the sales of the homes involved in the marijuana grow operation. She knew or should have known of her ex-boyfriend's extensive involvement in the marijuana grow operation, as he visited the homes that respondent listed and sold, where the grow operations were taking place. Respondent did not question where Phung received his money. She willingly took $10,000 from Phung for a trip to Vietnam, with no questions asked.

13. Respondent submitted two letters from real estate brokers attesting to her good character. It is commendable that Nguyen is willing to hire respondent, and Siddique is willing to have respondent continue her employment with his real estate company. While Nguyen and Siddique expressed knowledge of respondent's conviction, and respondent's competency as a real estate agent, they did not know in detail the facts and circumstances of respondent's conviction, and were not present when respondent transacted the real estate sales of the homes involved in the marijuana grow operation.

14. The department cannot even begin to assess respondent's rehabilitation until she is off of probation in 2015. Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that respondent did not commit additional crimes while on probation. (*In re Gossage* (2000) 23 Cal.4th 1080.)

Conclusion

15. Respondent is to be commended and encouraged to continue her efforts at rehabilitation. However, due to the grave nature and seriousness of her recent felony conviction, and her failure to take responsibility for her wrongful conduct, it is contrary to the public interest to allow respondent to continue to hold a real estate salesperson license, even on a probationary basis.

Bar Order

16. Business and Professions Code section 10087, subdivision (a), the commissioner may, after appropriate notice and opportunity for a hearing, by order, suspend, or bar from any position of employment, management, or control, for a period not exceeding 36 months, a real estate salesperson or real estate broker, or an unlicensed person issued an order under Section 10086, if the commissioner finds either: (1) that the bar is in the public interest and that the person has committed a violation of real estate law or order of the commissioner, or (2) that the person has been convicted or pled nolo contendere to any crime involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business.

17. The legislative intent for authorizing the commissioner to issue an Order of Debarment is to prevent real estate licensees, who have been disciplined by the department, from seeking employment with real estate-related companies that are regulated by departments other than the Department of Real Estate. (Stats.2008, c. 286 (S.B. 1737), § 1.)

18. This statute applies to real estate salespersons, real estate brokers, or unlicensed persons issued an order pursuant to Business and Professions Code section 10086. Respondent is a person whose real estate salesperson license has been revoked. Even though her license has been revoked, he is subject to the jurisdiction of the department by virtue of having been licensed and having rights of reinstatement, pursuant to Business and Professions Code sections 10171.3 and 10182, in conjunction with Government Code section 11522.

19. Pursuant to Government Code section 11522, respondent has an opportunity to petition for reinstatement of her license after one year following the revocation of her license. However, even if respondent's petition for reinstatement is granted, the Bar Order, if not lifted, would prohibit respondent from engaging in real estate and related real estate activities until the 36-month bar period has elapsed.

Cause to Issue Bar Order

20. Respondent is subject to debarment under Business and Professions Code section 10087, subdivision (a)(2), because she was found in possession of money in excess of $100,000 obtained from the sale, transportation or manufacture of a controlled substance, to wit: marijuana, as set forth in Finding 3. In so doing, respondent caused material damage to the public. Respondent showed some evidence of rehabilitation, as set forth in Legal Conclusions 3 through 6, however, given the seriousness and recency of her crime, it would be contrary to the public interest to reduce the period of debarment. Respondent's bar from any position of employment, management or control in any real estate-related business for a period of 36 months is appropriate given the facts and circumstances in this matter.

ORDER

1. Real Estate Salesperson License Number S01434614 issued to respondent Vivian Hoang is revoked, pursuant to Legal Conclusions 7 and 8.

2. The department's Bar Order against respondent Vivian Hoang is affirmed.

DATED: October 14, 2011

DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

PLAG

DEPARTMENT OF REAL ESTATE
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

FILED
NOV 22 2011
DEPARTMENT OF REAL ESTATE
By [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Bar Order of:	NO. H-5568 SAC
VIVIAN HOANG,	BAR ORDER (B&P Code § 10087)
Respondent.	

TO: VIVIAN HOANG (herein "Respondent")
5700 47th Ave.
Sacramento, CA 95824

On or about March 24, 2011, you were notified by the California Department of Real Estate (herein "the Department") that the California Real Estate Commissioner (herein "Commissioner") intended to issue a Bar Order against you pursuant to section 10087(a)(2) of the Business and Professions Code (herein "the Code") for the allegations in the Accusation filed by the Department on February 10, 2011 in Case No. H- 5550 SAC. On or about March 30, 2011, you timely requested a hearing to contest the Bar Order pursuant to section 10087(b) of the Code. On or about September 16, 2011, a hearing was held on the Notice of Intention to Issue Bar Order before the Office of Administrative Hearings in Sacramento, California. Based upon the Proposed Decision of the Administrative Law Judge presiding over said hearing, the

Commissioner hereby issues the following Findings of Fact, Conclusions of Law and Bar Order under the authority of section 10087 of the Code.

FINDINGS OF FACT

1. On or about May 7, 2010, in the Superior Court of the State of California, County of Sacramento, Case Number 07F09023, you were convicted of violating section 11370.6(a) of the Health and Safety Code (possession of money or negotiable instruments in excess of $100,000 obtained from the sale, transportation or manufacture of a controlled substance), a felony which bears a substantial relationship section 2910, title 10, California Code of Regulations to the qualifications, functions, or duties of a real estate licensee and constitutes grounds under sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under Part 1 of Division 4 of the Business and Professions Code (herein "the Real Estate Law").

2. Your conviction involved an unlawful act with the intent of conferring a financial or economic benefit upon yourself, in that you knowingly profited from the sale of homes used for marijuana growing operations.

3. By possessing money in excess of $100,000 obtained from the sale, transportation or manufacture of a controlled substance, you caused material damage to the public.

CONCLUSIONS OF LAW

Based on the findings set forth above in paragraphs 1 through 3, the Commissioner determines that you have been convicted of an offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business in accordance with the provisions of this the Real Estate Law.

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BAR ORDER

NOW, THEREFORE, IT IS ORDERED, pursuant to the authority of sections 10086 and 10087 of the Code, you, VIVIAN HOANG, are hereby barred and prohibited for a period of thirty-six (36) months from the effective date of this Bar Order, from engaging in any of the following activities in the State of California:

(A) Holding any position of employment, management, or control in a real estate business;

(B) Participating in any business activity of a real estate salesperson or a real estate broker;

(C) Engaging in any real estate related business activity on the premises where a real estate salesperson or real estate broker is conducting business; and, participating in any real estate related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company.

THIS BAR ORDER IS EFFECTIVE IMMEDIATELY.

IT IS SO ORDERED 11/21/11.

BARBARA J. BIGBY
Acting Real Estate Commissioner

DEPARTMENT OF REAL ESTATE
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

FILED
MAR 24 2011
DEPARTMENT OF REAL ESTATE
By Allison

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of: VIVIAN HOANG, Respondent.	NO. H- 5568 SAC NOTICE OF INTENTION TO ISSUE BAR ORDER

TO: VIVIAN HOANG (herein "Respondent")
9299 E. Stockton Blvd., Suite 40
Elk Grove, CA 95624

Pursuant to section 10087 of the California Business and Professions Code (herein "the Code"), you, Respondent, are hereby notified of the intention of the California Real Estate Commissioner (herein "Commissioner") to issue a Bar Order pursuant to section 10087(a)(2) of the Code on the following grounds:

On or about May 7, 2010, in the Superior Court of the State of California, County of Sacramento, Case Number 07F09023, Respondent was convicted of violating section 11370.6(a) of the California Health and Safety Code (possession of money or negotiable instruments in excess of $100,000 obtained from the sale, transportation or manufacture of a controlled substance), a felony which bears a substantial relationship section 2910, title 10, California Code of Regulations to the qualifications, functions, or duties of a real estate licensee

and constituted grounds under sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under Part 1 of Division 4 of the Business and Professions Code (herein "the Real Estate Law").

The events and circumstances leading to the conviction set fourth above are that Respondent knowingly participated in an illegal scheme to cultivate and sell large quantities of marijuana which is an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

On or about February 10, 2011, the Department filed its Accusation, in Department Case Number H-5550 SAC, seeking discipline against the real estate salesperson license issued to VIVIAN HOANG, for the felony conviction identified above.

Please take notice that the Commissioner seeks to bar and prohibit you for a period of thirty-six (36) months from the effective date of Bar Order from engaging in any of the following activities in the State of California:

(A) Holding any position of employment, management, or control in a real estate business;

(B) Participating in any business activity of a real estate salesperson or a real estate broker;

(C) Engaging in any real estate related business activity on the premises where a real estate salesperson or real estate broker is conducting business; and;

(D) Participating in any real estate related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company.

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NOTICE OF RIGHT AND OPPORTUNITY FOR A HEARING

Pursuant to section 10087 of the Code, you have the right to request a hearing under the California Administrative Procedure Act (Chapter 4.5 – commencing with section 11400 of the Government Code). If you desire a hearing, you must submit a written request within fifteen (15) days after the mailing or service of this "Notice of Intention to Issue Bar Order." The request may be in any form provided it is in writing, includes your current return address, and indicates that you want a hearing, is signed by you or on your behalf, and is delivered or mailed to the Department of Real Estate, P. O. Box 187007, Sacramento, California, 95818-7007, Attention Legal Section, or is delivered personally to the offices of the Department of Real Estate, 2201 Broadway, Sacramento, California.

If no hearing is requested within said fifteen (15) day time period, your failure to request a hearing shall constitute a waiver of the right to a hearing.

YOU ARE IMMEDIATELY PROHIBITED FROM ENGAGING IN ANY BUSINESS ACTIVITY INVOLVING REAL ESTATE THAT IS SUBJECT TO REGULATION UNDER THE REAL ESTATE LAW.

It is so ordered on this 21st day of March, 2011.

JEFF DAVI

Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner