

FILED

OCT 31 2025

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By B. Nicholas

* * *

In the Matter of the Accusation of:)	DRE No. H-3580 FR
DIANE NGUYEN HO,)	OAH No. 2025010343
Respondent.)	

DECISION

The Proposed Decision dated September 15, 2025, 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.

1. On Page 14, Paragraph 5, "...by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 137000, Sacramento, CA 95818-7000" is corrected to: "...by sending a certified letter to the Commissioner at the Department of Real Estate, 651 Bannon Street, Suite 500, Sacramento, CA 95811".

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted broker license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department of Real Estate (the Department) may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire thirty (30) days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 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 NOV 21 2025.

IT IS SO ORDERED 10/24/2025

Chika Sunquist
REAL ESTATE COMMISSIONER



By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE
By B. Nicholas

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DIANE NGUYEN HO, Respondent.

Agency Case No. H-3580 FR

OAH No. 2025010343

PROPOSED DECISION

Administrative Law Judge Frances M. Valdez, State of California, Office of Administrative Hearings, heard this matter on August 18, 2025, by videoconference.

Attorney Kyle T. Jones represented complainant Ruben Coronado, Supervising Special Investigator, Department of Real Estate, State of California.

Attorney Jonathan C. Turner represented respondent Diane Nguyen Ho, who was present.

The record closed and the matter was submitted for decision on August 18, 2025.

FACTUAL FINDINGS

1. Respondent Diane Nguyen Ho was issued Real Estate Broker License Number 01743227 on May 4, 2022. The license is scheduled to expire on May 3, 2026. Respondent was previously issued a Real Estate Salesperson license on April 18, 2006, and this license was terminated as of May 4, 2022.

2. On November 6, 2024, complainant Ruben Coronado filed an accusation in his official capacity as Supervising Special Investigator, Department of Real Estate (Department), State of California. The accusation alleges respondent is subject to discipline based on a conviction for embezzlement, and for fraud or dishonest dealing. Respondent filed a notice of defense and this hearing followed.

Criminal Conviction and Underlying Conduct

3. On April 22, 2022, a felony complaint was filed in the Superior Court of California, County of Santa Clara, charging respondent with one felony count of embezzlement. On November 13, 2023, respondent was convicted, on a plea of nolo contendere, of violating Penal Code section 506, embezzlement, a misdemeanor.¹ Imposition of sentence was suspended, and respondent was placed on court probation for one year on terms including paying fines and performing 100 hours of community service.

¹ The Accusation alleges the conviction occurred on March 11, 2024; however, the court documents indicate that the conviction occurred on November 13, 2023, and that the sentencing was on March 11, 2024.

4. The underlying conduct took place in late 2012 through early 2013. At the time, respondent owned a travel agency. Respondent booked airfare and handled passport and visa issues on behalf of her clients. Before 2013, respondent quoted clients an airfare price; clients paid; and airlines held reservations for 14 days. During the holding period, respondent facilitated visa processing. Once the client's visa was approved, respondent secured the tickets. The quoted airfare price remained the same because respondent secured the tickets within the 14-day holding period.

However, in 2013, the airline policy changed and reservations were held for only 24 hours. Because of this, tickets were cancelled before visas were approved. By the time respondent obtained visas, the airlines had increased the clients' ticket prices, leaving a shortfall between the price quoted to clients and the final airfare. Respondent tried to cover the shortfall with loans, client payments, and personal funds, but was unable to sustain the business losses. At hearing, respondent acknowledged that clients paid for airfare, did not receive plane tickets, and did not receive refunds. Respondent maintains that she never misappropriated client funds. Instead, she forwarded client funds to an airline consolidator who kept the funds and did not issue airline tickets because the prices had increased.

5. On April 30, 2025, respondent was granted automatic conviction relief under Penal Code section 1203.425, which set aside respondent's plea and dismissed the complaint. No evidence was offered that indicates respondent's conviction records have been sealed.

Respondent's Additional Evidence

6. Respondent was born in Vietnam and was imprisoned when attempting to escape communism. She immigrated to the United States in 1987 and opened her travel agency in 1991.

7. Respondent takes full responsibility for the collapse of her travel agency in 2013. As a result, she has had trouble sleeping at night. She has tried to learn from the experience and improve herself. Respondent expressed deep remorse for what occurred and has not worked in the travel industry since 2013.

8. Respondent completed her probation, paid fines, and completed 100 hours of community service with the Muslim Community Association (MCA) and Santa Clara Lions Pop Warner Football Club. Respondent continues to volunteer for the MCA, assisting individuals with immigration issues.

9. Respondent went back to school and worked while attending classes. Respondent took courses in finance, accounting, management, marketing, and business ethics. On May 11, 2018, and May 6, 2019, respondent received certificates of achievement in recognition of her academic achievements at Mission College.

10. In 2020, respondent earned her associate degree in hospitality and management from Mission College. Respondent earned a bachelor of science degree in business administration (finance) from San José State University on May 27, 2022.

11. In 2024, respondent was a member in good standing and completed a course with the California Association of Business Brokers. In an undated certificate, the California Association of Business Brokers conferred upon respondent the designation of certified business broker.

12. In early 2025, respondent completed two courses through the International Business Brokers Association: standards of care for brokers and legal aspects of business brokerage.

13. Respondent describes real estate as her passion. She enjoys using her experience and education to help sellers and buyers achieve their goals. Respondent's income as a real estate broker supports herself, her spouse, her daughter, and her elderly mother.

14. Respondent has no record of previous license discipline.

LETTERS OF SUPPORT

15. Hekmat Elmekawy wrote a letter and is the assistant manager for the MCA. Elmekawy described how respondent joined the MCA to fulfill her court-ordered community service hours, but that once her obligation was satisfied she continued to volunteer. Elmekawy noted specific instances in which respondent assisted individuals in obtaining work permits, renewing green cards, and applying for citizenship. Elmekawy described respondent as knowledgeable, honest, ethical, trustworthy, and professional.

16. Stephanie Ho wrote a letter and is respondent's daughter. Ho is aware of respondent's conviction and reported that respondent has tried to do better and learn from the experience. Ho described respondent's academic achievements and the challenges her mother faced as an older student whose first language is not English. Ho described respondent's positive relationships with her real estate clients and her efforts to handle stressful transactions. Ho describes respondent as a strong, dependable, and positive person.

17. Leo Vu wrote a letter and is a former client and employee of respondent's travel agency. Vu has known respondent for over 20 years and is aware of her conviction. Vu described the circumstances underlying respondent's conviction as an "isolated circumstance that stands in stark contrast to her decades of compassionate and dedicated professional service." Vu noted that respondent prioritizes her client's needs above her interests. Vu described respondent as having an unparalleled work ethic, remarkable problem-solving skills, and a profound sense of personal responsibility. Vu believes respondent can make a positive impact in the real estate profession.

18. Tran Thi Bong Giay wrote a letter and was a former client of respondent's travel agency. Giay has known respondent since 1997, first as a client and then as a friend. Giay observed respondent working tirelessly to assist her clients with visas and other travel issues. Giay is aware that respondent closed her business, but demonstrated resilience by going back to school to earn her degrees. Giay noted that he loaned respondent money and she paid him back in full. Giay described respondent as reliable, trustworthy, honest, and hardworking.

Costs

19. The Department incurred \$1,257.45 in investigation costs and \$1,082.40 in enforcement costs to prosecute this action, for a total costs claim of \$2,339.85. The above costs are supported by certifications that describe the tasks performed, time spent on each task, and method of calculating the cost, in compliance with California Code of Regulations, title 1, section 1042. In the absence of any evidence to the contrary, the above costs are found to be reasonable.

LEGAL CONCLUSIONS

1. The burden of proof is on the Department to show cause for discipline, by clear and convincing evidence. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457; Evid. Code, § 500.) The burden is on respondent to show rehabilitation, by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

Penal Code Section 1203.425 Relief

2. Respondent argues that her conviction cannot now be cause to discipline her license because her conviction has been “expunged” pursuant to Penal Code section 1203.425.²

3. Section 1203.425 is an automatic conviction record relief statute that became operative on October 1, 2024. A person granted relief “shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.” (Pen. Code, § 1203.425, subd. (a)(2)(C).) The statute lists several conditions where the automatic conviction record relief has no effect. (*Id.* at subd. (a)(4).) None of the conditions are applicable in this matter.

4. Respondent argues that when section 1203.425 relief is granted the information is subject to sealing under section 851.92, and disclosure of sealed information may result in penalties. Respondent contends that section 1203.425 lists exceptions to when the dismissed conviction can be used and there are no exceptions listed for licensees such as real estate professionals. Respondent further argues that section 1203.4, another conviction relief statute, requires individuals to disclose

² Subsequent statutory references are to the Penal Code, unless otherwise noted.

convictions to state licensing agencies; however, section 1203.425 does not include that requirement. Respondent asserts that convictions dismissed under section 1203.425 cannot be used in a licensing context.

5. The Department argues that relief under section 1203.425 is a dismissal, not an expungement. The Department cites *Skulason v. California Bureau of Real Estate* (2017) 14 Cal.App.5th 562, 568, and argues that the Court of Appeal has considered language releasing a person from "all penalties and disabilities" and that a conviction may still be used in certain contexts, such as licensing enforcement actions. The Department argues that section 1203.425 addresses superior courts and requirements for handling criminal records, which are not at issue in this matter.

6. In *Skulason*, a real estate salesperson brought an action against the Department alleging it erroneously refused to remove from its website a document revealing that she had sustained misdemeanor convictions that were later dismissed under sections 1203.4 and 1203.4a. (*Skulason v. California Bureau of Real Estate, supra*, 14 Cal.App.4th at p. 565.) The Court of Appeal found that section 1203.4 does not expunge a prior conviction because the statute "does not purport to render the conviction a legal nullity." (*Id.* at p. 568.) Rather, except elsewhere stated, a person is "released from all penalties and disabilities resulting from the offense." (*Ibid.*) The court found that the dismissal statute simply frees the individual "from certain 'penalties and disabilities' of a criminal or like nature." (*Ibid.* quoting *Danser v. Public Employees' Retirement System* (2015) 240 Cal.App.4th 885, 894-895.) The Court of Appeal concluded that the Department had no duty to remove the information from its website, including convictions that were eventually dismissed.

7. In *Danser*, a former superior court judge was convicted of a crime that was later dismissed under section 1203.4, which impacted retirement benefits

eligibility. (*Danser v. Public Employees' Retirement System, supra*, 240 Cal.App.4th at p. 887.) The former judge argued that the section 1203.4 dismissal meant there was no conviction and he should receive retirement benefits. (*Id.* at p. 888.) The Court of Appeal noted that while section 1203.4 relief is sometimes referred to as an "'expungement', the statutory release from penalties and disabilities does not literally expunge the conviction and it does not render the conviction a legal nullity." (*Id.* at pp. 894-895.) In finding that a section 1203.4 dismissal does not alter civil consequences of a conviction, the Court of Appeal reasoned that "the release pursuant to section 1203.4 does not apply to provisions designed to protect the public." (*Id.* at p. 895.)

8. Here, the language in section 1203.425 releasing an individual from penalties and disabilities resulting from the offense parallels that of section 1203.4. Therefore, the analyses in *Skulason* and *Danser* are persuasive. Respondent's conviction is not expunged; it is dismissed. Respondent has been relieved of certain penalties and disabilities of a criminal or like nature. Licensing enforcement is not criminal in nature.

Additionally, section 1203.425 does not state that any relief applies retroactively. The accusation in this matter was filed more than five months before respondent received automatic conviction record relief. The fact that this matter came to hearing after respondent had received section 1203.425 relief does not prevent the Department from protecting the public through license discipline. The section 1203.425 dismissal did not erase the fact that respondent committed the conduct summarized in Factual Finding 4 and pleaded *nolo contendere* to misdemeanor embezzlement. It also did not alter the civil consequences flowing from the plea, which attached many months before the section 1203.425 dismissal.

Finally, no evidence was presented that respondent's records were sealed. Accordingly, respondent's conviction may be considered in this matter.

Causes for Discipline

9. The Real Estate Commissioner (Commissioner) may suspend or revoke a real estate license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, subd. (a), 10177, subd. (b)(1).) Respondent's conviction for embezzlement (Factual Finding 3) is substantially related because it involves the fraudulent taking, obtaining, appropriating, or retaining of funds or property belonging to another person. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(1).) Accordingly, cause for discipline exists under Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b)(1).

10. The Commissioner may suspend or revoke a real estate license if the licensee has engaged in conduct that constitutes fraud or dishonest dealing. (Bus. & Prof. Code, § 10177, subd. (j).) Respondent engaged in dishonest dealing when she accepted client funds for airline tickets, but clients did not receive airline tickets or refunds. (Factual Finding 4.) Accordingly, cause for discipline exists under Business and Professions Code section 10177, subdivision (j).

Determination of Discipline

11. The purpose of administrative proceedings regarding professional licenses is not to punish the applicant or licensee, but to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.) The legislature intends that real estate licensees

will be honest, truthful, and worthy of the fiduciary obligations they will bear.

(*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

12. The Commissioner has established criteria to be used in evaluating the rehabilitation of a licensee with a criminal record. (Cal. Code Regs., tit. 10, § 2912.) The relevant criteria to be considered include: the time elapsed since the commission of the offense and conviction; restitution; expungement; successful completion of probation; payment of fines and monetary penalties; correction of business practices; new and different social and business relationships from those at the time of the offense; stability of family life and fulfillment of parental responsibilities; completion of formal educational or vocational training courses for economic self-improvement; significant and conscientious involvement in community or church programs designed to provide social benefits or ameliorate social problems; and a change in attitude from that which existed at the time of the offense.

13. Respondent's conviction is serious and occurred less than two years ago. However, respondent has not had any previous license discipline or other criminal offenses. The commission of the offense occurred more than a decade ago, in 2012 and 2013. Since then, respondent has earned two degrees and embarked on a career as a real estate professional. Respondent has completed coursework in business ethics and is involved in professional organizations. She successfully completed probation, paid fines, and completed her community service requirement. Respondent continues to volunteer in the community, assisting immigrants like herself. Respondent has a stable family life and supports her daughter, spouse, and elderly mother. Letters of support consistently describe respondent as trustworthy and honest. Respondent has been a licensed real estate professional since 2006 without any reported misconduct or license discipline. Respondent is remorseful for her conduct while acting as a travel

agent. She emphasized that she learned a very valuable lesson. Overall, respondent has demonstrated sufficient rehabilitation and the public will be adequately protected by the order below, which allows respondent to retain her real estate license on a restricted basis for three years.

Costs

14. Business and Professions Code section 10106 authorizes the Department to recover its reasonable costs of investigation and enforcement in disciplinary proceedings if the licensee is found to have violated the Real Estate Law. As set forth in Legal Conclusions 9 and 10, respondent violated the Real Estate Law. As set forth in Factual Finding 19, complainant has reasonably incurred \$2,339.85 in actual costs in connection with the investigation and enforcement of this matter.

15. In *Zuckerman v. State Board of Chiropractic Examiners* ((2002) 29 Cal.4th 32, 45) the California Supreme Court set forth standards for determining whether costs should be assessed in the particular circumstances of each case, to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. None of these considerations support a reduction in the Department's cost recovery in this case.

ORDER

All licenses and licensing rights of respondent Diane Nguyen Ho under the Real Estate Law are revoked; provided, however, that a restricted real estate broker license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for restricted license within 90 days from the effective date of this Decision.

The restricted license issued to respondent shall be subject to all the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime that is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulation of the Real Estate Commissioner, or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations, or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall notify the Real Estate Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 137000, Sacramento, CA 95818-7000. 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 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.

6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department of Real Estate including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

7. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning

respondent's activities for which a real estate license is required as the Commissioner shall deem appropriate to protect the public interest. Such reports may include, but are not limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction that respondent engaged during the period covered by the report.

8. Respondent must pay the Department of Real Estate's costs for the investigation and enforcement of this action under Business and Professions Code section 10106, in the amount of \$2,339.85. Respondent shall be permitted to pay these costs in a payment plan approved by the Department, with payments to be completed no later than three months prior to the end of the restriction on her license.

DATE: 09/15/2025

A handwritten signature in black ink, reading "Frances Valdez". The signature is written in a cursive, flowing style.

FRANCES M. VALDEZ

Administrative Law Judge

Office of Administrative Hearings