

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 30 2002
DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Application of)
)
 BILLY SIENG PHONG,)
)
 Respondent.)
_____)

By Shelly C.
NO. H-3654 SAC
OAH No. N2002050061

DECISION

The Proposed Decision dated October 1, 2002, 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. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon
on November 14, 2002.

IT IS SO ORDERED October 15 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

BILLY SIENG PHONG,

Respondent.

Case No. H-3654 SAC

OAH No. N2002050061

PROPOSED DECISION

On September 9, 2002, in Sacramento, California, Leonard L. Scott, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David B. Seals, Counsel, represented the complainant.

Billy Sieng Phong, respondent, appeared in his own behalf.

Evidence was received, the record was closed and the matter was submitted.

FACTUAL FINDINGS

1. Charles W. Koenig (Koenig), Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California, filed the Statement of Issues against respondent. Koenig acted in his official capacity.

2. On or about May 30, 2001, respondent filed a Real Estate "Salesperson License Application" with the Department.

Respondent has not successfully completed all of the courses required by Business and Professions Code section 10153.4.

3. On November 10, 1999, in the Superior and Municipal Court, County of Sacramento, State of California, in the matter entitled *People v. Billy Phong*, case number 99F08122, respondent was convicted, on his plea of nolo contendere, of a violation of Penal Code section 496(a) (receiving stolen property), a felony and a crime involving moral

turpitude. Respondent was placed on five years probation and ordered to serve 365 days in jail. Respondent's crime is substantially related to the qualifications, functions and duties of the licensed activity pursuant to the criteria enumerated in Title 10, California Code of Regulations section 2910.

The facts and circumstances of the offense are that respondent knowingly bought 34 stolen laser printers and resold them on Ebay.

4. On July 25, 2001, in the Superior Court, County of Santa Clara, State of California, in the matter entitled *People v. Billy Phong*, case number CC087168, respondent was convicted, on his plea of nolo contendere, of violations of Penal Code sections 484/487(a) (grand theft) and 459/460(b) (second degree burglary) with a section 12022.6(a)(1) enhancement, felonies and crimes involving moral turpitude. Respondent was placed on formal probation for five years and ordered to serve nine months in jail. Respondent is still on probation and paying restitution. Respondent's crimes are substantially related to the qualifications, functions and duties of the licensed activity pursuant to the criteria enumerated in Title 10, California Code of Regulations section 2910.

The facts and circumstances of the offense are that respondent committed a burglary and stole approximately 15 laptop computers to resell.

5. Respondent testified that all of his crimes occurred during the summer of 1999, although the convictions occurred later. He has not committed any crimes since then. After the crimes, he completed classes at De Anza College. While in jail, he completed a number of additional courses. He is the manager of Cellular Express. He said he has learned his lesson since the crimes and no longer associates with those involved in the crimes with him.

6. Robert Do testified that he is a licensed real estate broker and owns Allstate Homes. He taught some real estate classes that respondent attended and found respondent a good student. He would trust respondent and, if respondent receives a license, would offer him a job.

7. Miyong Chong is respondent's girlfriend and a licensed real estate agent. She works with respondent at Cellular Express, where he is a manager. She has found him to be honest. She has attended church and bible study class all of her life and respondent has started attending with her.

8. Respondent presented evidence of his efforts to rehabilitate himself since his crimes in 1999 but the crimes are recent and serious; he is still paying restitution and is still on probation. It is much too early to be able to determine whether he has rehabilitated himself and is sufficiently trustworthy to receive a restricted license.

LEGAL CONCLUSIONS

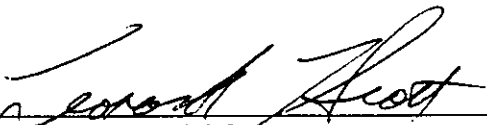
Cause for denial of respondent's application for a Real Estate Salesperson's license was established for violation of Business and Professions Code sections 480 and 10177(b), as found in Findings 3 and 4.

ORDER

The application of respondent Billy Sieng Phong for a Real Estate Salesperson's License is denied pursuant to the Legal Conclusion.

Dated:

October 1, 2002


LEONARD L. SCOTT
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 23 2002

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

BILLY SIENG PHONG

By Shelly Ely

Case No. H-3654 SAC

OAH No. N2002-05-0061

Respondent

FIRST CONTINUED
NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, 560 J STREET, SUITES 340/360, SACRAMENTO, CALIFORNIA 95814 on MONDAY--SEPTEMBER 9, 2002, at the hour of 10:00 AM, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearing within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: MAY 23, 2002

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS, Counsel

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

FILED
MAY 08 2002

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

By Shelly Ely

BILLY SIENG PHONG

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}

Case No. H-3654 SAC

OAH No. N2002-05-0061

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, 560 J STREET, SUITES 340/360, SACRAMENTO, CALIFORNIA 95814 on FRIDAY--JULY 12, 2002, at the hour of 9:00 AM, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearing within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

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Dated: MAY 8, 2002

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS, Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
MAR 08 2002

DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 BILLY SIENG PHONG,)
13 Respondent.)

No. H- 3654 SAC

STATEMENT OF ISSUES

14
15 The Complainant, Charles W. Koenig, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against BILLY SIENG PHONG (hereinafter "Respondent")
18 alleges as follows:

19 I

20 Respondent, pursuant to the provisions of Section
21 10153.3 of the Business and Professions Code, made application to
22 the Department of Real Estate of the State of California for a
23 real estate salesperson license on or about May 30, 2001, with
24 the knowledge and understanding that any license issued as a
25 result of said application would be subject to the conditions of
26 Section 10153.4 of the Business and Professions Code.

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II

Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

III

On or about November 10, 1999, in the Sacramento Superior Court, County of Sacramento, Respondent was convicted of violation of California Penal Code Section 496(a) (Receive Known Stolen Property), a felony and a crime involving moral turpitude which is substantially related under Section 2910, Title 10, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

IV

On or about July 25, 2001, in the Superior Court of California, San Jose Facility, Respondent was convicted of one count of violation of California Penal Code Section 484/487(a) (Grand Theft) and one count of violation of California Penal Code Section 459/460(b) (Second Degree Burglary) with a Section 12022.6(a)(1) enhancement, felonies and crimes involving moral turpitude which are substantially related under Section 2910, Title 10, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

V

The crimes for which Respondent was convicted, as alleged in Paragraphs III and IV above, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and

1 Professions Code.

2 WHEREFORE, the Complainant prays that the above-
3 entitled matter be set for hearing and, upon proof of the charges
4 contained herein, that the Commissioner refuse to authorize the
5 issuance of, and deny the issuance of, a real estate salesperson
6 license to Respondent, and for such other and further relief as
7 may be proper under other provisions of law.

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9 
10 CHARLES W. KOENIG
11 Deputy Real Estate Commissioner

12 Dated at Sacramento, California,
13 this 7th day of March, 2002.

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