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MAY 28 2010

DEPARTMENT OF REAL ESTATE

By *H. Zirin*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

PHONG T. VU,

Respondent.

No. H-4078 SAC

ORDER GRANTING UNRESTRICTED LICENSE

On January 4, 2005, a Decision was rendered herein denying Respondent's application for a real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on February 23, 2005, and Respondent has operated as a restricted licensee since that time.

On June 22, 2009, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

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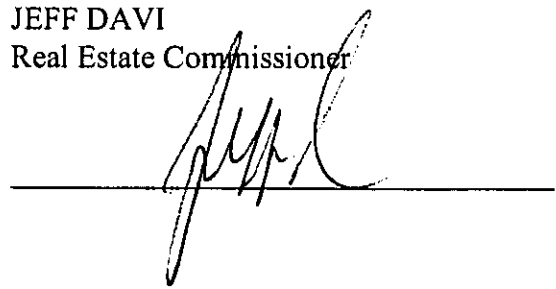
NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of restrictions is granted and that a real estate salesperson license be issued to Respondent if Respondent satisfies the following conditions within twelve (12) months from the date of this

Order:

1. Submittal of a completed application and payment of the fee for a real estate salesperson license.
2. Submittal of proof that you have, within the 12 month period preceding the submittal of an application for an unrestricted license, completed the continuing education courses required for renewal of a license.

This Order shall become effective immediately.

IT IS SO ORDERED 5/27/2010

JEFF DAVI
Real Estate Commissioner


FLAG

FILED
JAN 06 2005

DEPARTMENT OF REAL ESTATE
By Cecilia Shannon

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
PHONG T. VU)	No. H-4078 SAC
Respondent.)	N-2004090313

DECISION

The Proposed Decision dated December 16, 2004, 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 with the following exceptions:

Condition "4" and "5" of the Order of the Proposed Decision is not adopted and shall not be a part of the Decision.

AMENDED

The application for a real estate salesperson license is denied, but this right to a restricted real estate salesperson is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commission's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on JANUARY 26 2005.

IT IS SO ORDERED 1-4 2005.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

PHONG T. VU

Respondent.

Case No. H-4078 SAC

OAH No. N2004090313

PROPOSED DECISION

William O. Hoover, Administrative Law Judge, Office of Administrative Hearings, heard this matter on November 22, 2004, in Sacramento, California.

Truly Sughrue, Real Estate Counsel, represented Peter Saverien, (complainant) Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California.

The Law Offices of Johnny L. Griffin, III, by Manolo H. Olaso, Attorney at Law, represented Phong T. Vu (respondent) who was also present.

The matter was heard and submitted on November 22, 2004.

FACTUAL FINDINGS

1. On February 13, 2004 the Department received respondent's application for a real estate salesperson's license that was dated February 10, 2004. The application is subject to the provisions of Business and Professions Code section 10153.4.

2. By letter dated May 27, 2004, the Department advised respondent that following review and evaluation of his application that additional information would be required before a determination could be made whether or not to issue the license. As part of that process complainant made and filed this Statement of Issues in his official capacity. The Statement of Issues alleges that respondent suffered a criminal conviction which is grounds for denial of licensure.

3. Respondent timely requested and is entitled to the instant hearing before an Administrative Law Judge of the Office of Administrative Hearings pursuant to Government Code section 1500 et seq. The standard of proof is preponderance of the evidence.

4. On or about June 8, 2000, in the United States District Court for the Eastern District of California, in Case No. 00-CR-73-ALL, respondent was convicted on his plea of guilty of a violation of Title 18 United States Code section 656m(1) (bank embezzlement). On September 13, 2000, the court sentenced respondent to serve 6 months in custody beginning October 2, 2000, followed by 12 months of supervised release. The court also imposed various standards as well as special terms and conditions relating to respondent's supervised release. These terms and conditions included requirements that respondent: not dissipate assets, provide access to financial records, and obtain no new credit. It is well settled that the crime of embezzlement necessarily involves moral turpitude and is substantially related to the qualifications, functions, and duties of the licensed activity.¹

5. The facts and circumstances of the offense will be discussed in greater detail below, but they essentially involved respondent's failure to account for \$30,000 that he allegedly disbursed as a California Bank and Trust bank teller. Respondent's family made restitution to the bank on his behalf and respondent is in the process of making restitution to them at approximately \$100 per month. Respondent otherwise complied with all the terms and conditions of his supervised release, which was officially terminated effective April 10, 2002. Respondent, now 29 years old, currently lives at home with and pays rent to his parents.

6. Respondent previously submitted an application for a real estate brokers license on February 7, 2003. Following an evidentiary hearing in September 2003 before an Administrative Law Judge, the Department formally denied the application, effective November 17, 2003, in its Case No. H-3844 SAC (OAH No. N2003070352). With the exception of live testimony from respondent's mother and additional information about respondent's activities since the prior proceeding, the facts in that matter were virtually identical to those presented at the instant hearing.

7. The following Findings from the prior proceeding are instructive and are recited below:

6. The facts and circumstances leading to Mr. Vu's conviction are unusual and occurred on November 26, 1999. Mr. Vu worked as a bank teller for California Bank and Trust from about

¹ "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." *Harrington v. Department of Real Estate* (1989) 214 Cal.App. 3d 394, 402. "If (the) offenses reflect unfavorably on his honesty, it may be said that he lacks the necessary qualifications to become a real estate salesperson." *Harrington*, supra p. 402. "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." *Id.*, *Ring v. Smith* (1970) 5 Cal.App. 3d 197, 205.

August 1998 through November 1999. Mr. Vu issued a cash disbursement to a regular customer, a grocery store owner who operated a cash intensive business, late in the day of November 29, 1999 in the amount of \$31,000.00. Mr. Vu failed to obtain the customer's signature on a receipt for the disbursement and failed to have the customer complete a U.S. Treasury form for a cash disbursement of over \$10,000.00. Mr. Vu had signed bank disbursement forms for the withdrawal of the large sum of cash from the bank's vault, so there was no issue regarding who was responsible for the funds. The customer later disavowed being at the bank on that day or receiving the money. The bank's surveillance cameras failed, so there was no visual evidence of the transaction where Mr. Vu claimed he actually gave the funds to the customer.

7. Mr. Vu attributed the events that led to his conviction as the product of carelessness, and being naïve and overly trusting. He denied any guilt for embezzling any funds belonging to the bank, but he pointed out several times in his testimony that in his culture, he is taking responsibility for the losses suffered by the bank because he had been entrusted with the money when it was lost, and thus he was responsible for its loss. Mr. Vu pointed out that his fault was that he did not perform his job responsibilities correctly, and that he really did not fully appreciate the amount of money and his responsibility to make certain the transaction was fully documented. He noted the customer was a regular and had almost become a friend, leading him to trust the customer more than he should have.

8. Mr. Vu received his B.S. degree in Exercise Science from the University of California, Davis on March 23, 2000. He lives at home with his extended family. He has always been and remains fully employed in a variety of server jobs in local restaurants. He has fully satisfied all his supervised release and court obligations, and was released from supervision on April 10, 2002. He is active in the Vietnamese Catholic Church, and has earned the praise of his priest for his selfless work with the youth and in planning activities.

9. Mr. Vu's mother is a real estate broker licensed by the Department. Ms. Tran did not appear and testify on behalf of her son. She did submit a letter to the Department in support of her son's application. She intends to employ Mr. Vu as an Associate Broker in her firm, GHT Realty. She stated in her letter that she intends to closely supervise Mr. Vu's activities and wrote that she will not permit anything he does or fails to do to damage the excellent reputation she has worked hard to develop over the past 12 years as a broker. Ms. Tran made note of the fact that her son has "grown up" as a result of his

experience leading to his conviction and the sentence imposed, that he lost two years of his life he cannot retrieve, and that he has learned that he must be accountable for his actions. She mentioned that she has impressed upon him the need to pay attention to details, something he failed to do when he was younger.

8. In denying issuance of a real estate broker's license in the previous matter the Department stated in its Legal Conclusions that:

9. Mr. Vu was very mindful of the Department's criteria of rehabilitation and addressed the factors in his presentation. However, Mr. Vu failed to carry his burden of proof that he is rehabilitated sufficiently such that a real estate broker license should issue to him. A real estate broker is permitted by his license privilege to work alone and unsupervised. Mr. Vu has no experience in the real estate profession, and despite his expressed intention to work under his mother's supervision, the license as applied for would not require such an arrangement. A restricted real estate broker license, limiting Mr. Vu to working with his mother, was considered but rejected. Mr. Vu's rehabilitation at this point is not sufficient to warrant the issuance of such a restricted license, as set forth in more detail just below.

10. Mr. Vu did present some praiseworthy evidence of rehabilitation as evaluated by the Department's criteria set forth above, but it is incomplete and too early to conclude he is rehabilitated. The conviction is three years old, for conduct that occurred four years ago. The conviction was for a very serious offense involving the loss of a substantial sum of cash. Mr. Vu has verbally taken responsibility for the loss, but he contends he is not guilty of the crime of which he was convicted. His opportunity to prove that point was in the criminal court and he declined to do so. He did not take action against the bank customer, who, if Mr. Vu's version of the facts is correct, did Mr. Vu a grievous wrong. Mr. Vu's sentence was not as light as he contends, but it was at the lower end of the Federal Sentencing Guidelines. Mr. Vu successfully completed supervised release just a little more than a year ago. Restitution was made for the loss, but it is clear Mr. Vu did not make the restitution himself, but relied upon family members to pool resources to help him. It would be more impressive to have evidence that Mr. Vu is in the process of paying them back for their satisfaction of his obligation. Since Mr. Vu denies guilt for a criminal offense, it cannot be concluded he is remorseful. Mr. Vu has a stable and very supportive family life and the circumstances that led to the conviction appear unlikely to recur. Mr. Vu has finished a higher education. He is active in his church and serves it by organizing and leading youth activities. Mr. Vu enjoys support from his proposed primary broker,

his mother, who is fully informed of the conviction and its circumstances, and is willing to train and closely supervise him. On balance, the weight of the evidence in aggravation, including that the conviction is recent, for a very serious offense Mr. Vu denies, and that he has only been off supervised release for about a year outweigh the facts in rehabilitation at the present time. Particularly problematic here is that Mr. Vu seeks the privileges attendant to a broker's license. Under these circumstances, issuance of a real estate broker's license to Mr. Vu, even on a restricted basis, is not warranted. Mr. Vu is encouraged to reapply for the issuance of a real estate salesperson license, where the issue of the unsupervised exercise of the privilege of licensure is not an issue.

9. Respondent has acted upon the encouragement provided in the prior decision and is seeking to work for his mother as a salesperson in residential sales. He has taken and passed all classes and tests required of salespersons (as well as brokers). He has expressed extreme regret for everything that has occurred and has worked (and is working) at a local restaurant as a server and bartender to make ends meet and make restitution to his family. According to his mother respondent accompanies and assists her in areas not requiring a license. She began in real estate as salesperson in 1986 and opened her own office as a broker in 1992. Hers is a single person office and she does not use trust accounts, which greatly simplifies her record keeping and potential liability. All financial transactions are handled through escrow accounts with financial institutions. Respondent's mother is extremely supportive of him and stated that she would supervise his activities. She also stated that she has built a good reputation in the business over the years and would let nothing sully that reputation or adversely affect her broker's license. She believes respondent has learned from his experience and describes him as more responsible at home, more involved with their church and more attentive to detail. She stated that he is responsible for repaying the family the full amount of restitution and that he pays \$300 a month for room and board. Respondent's mother was quite persuasive in guaranteeing supervision of her son.

10. In evaluating the extent of rehabilitation, the provisions of California Code of Regulations section 2911 are instructive and were considered. Respondent had the burden of establishing that his licensure by the Department would not be contrary to the public interest and safety. Respondent has acknowledged and accepted responsibility for his conduct and, given the present circumstances, is not viewed as a potential financial threat or danger to the public. It is believed that he can be issued a properly conditioned (restricted) license that will suffice to protect the public interest.

APPLICABLE LAW

11. Business and Professions Code sections 480(a)(1), provides that the Department may deny issuance of a license to anyone who has been convicted of a crime that is substantially related to the qualifications, functions and duties of the licensed activity.

12. Business and Professions Code section 10177(b), provides that the Department may deny issuance of a license to anyone convicted of a felony or crime involving moral turpitude.

13. Business and Professions Code section 2910, subdivision (a) (1) and (c) provide:

(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:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

20. California Code of Regulations 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 or not 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) Abstinance 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.

(i) Completion of, or sustained enrollment in, formal education 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.

LEGAL CONCLUSIONS

1. Cause for denial of respondent's application pursuant to Business and Professions Code sections 480(a) and 10177(b), exists by reason of Factual Findings 1-11, 17, and 19.

2. Upon consideration of all the evidence in this matter sufficient cause exists basis to warrant issuance of a restricted license based on a substantial showing of rehabilitation, pursuant to California Code of Regulations section 2911. (Factual Findings 1-15 and 20)

ORDER

Respondent'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 the Respondent shall be subject to all of the provisions of Sections 10156.7 of the Business and Professions Code sections 10156.7, 10153.4, 10156.5, 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 this 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 this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions

attaching to the restricted license until four 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 Department of Real Estate which shall certify as follows:

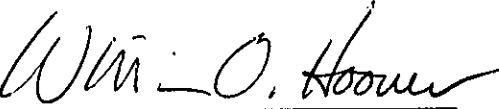
(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(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, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.

5. Pursuant to Section 10154, if respondent has not satisfied the requirements for an unqualified license under Section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

Dated: 12/16/04


WILLIAM O. HOOVER
Administrative Law Judge
Office of Administrative Hearings

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

FILED

SEP 17 2004

DEPARTMENT OF REAL ESTATE

By *Maureen G. Zini*

In the Matter of the Application of

PHONG T. VU,

Case No. H-4078 SAC

OAH No.

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, SUITE 340/360, SACRAMENTO, CA 95814** on **MONDAY, NOVEMBER 22, 2004**, at the hour of **1:30 P.M.**, 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 Hearings 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 his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: SEPTEMBER 17, 2004

DEPARTMENT OF REAL ESTATE

By *Truly Sughrue*
TRULY SUGHRUE, Counsel (17)

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0781

FILED

AUG 23 2004

DEPARTMENT OF REAL ESTATE

By John S

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 PHONG T. VU,) No. H-4078 SAC
13 Respondent.) STATEMENT OF ISSUES

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15 The Complainant, PETER SAVERIEN, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against PHONG T. VU (hereinafter "Respondent"), is informed and
18 alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about February 17, 2004.

23 II

24 Complainant, PETER SAVERIEN, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity and not otherwise.

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III

On or about September 13, 2000, in the United States District Court for the Eastern District of California, Respondent was convicted of a violation of Title 18 United States Code, Section 641 (Bank Embezzlement), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, as alleged above, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

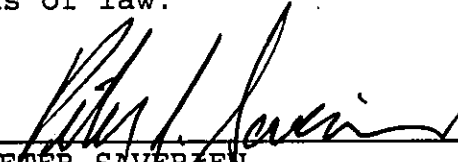
PRIOR PROCEEDING

V

Effective November 17, 2003, in Case No. H-3844 SAC before the State of California Department of Real Estate, the application of Respondent for a real estate broker license was denied for violation of Sections 480(a), and 10177(b) of the Code.

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

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8 
9 PETER SAVERIEN
 Deputy Real Estate Commissioner

10 Dated at Sacramento, California,
11 this 30th day of June, 2004.

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