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DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

THUAN HUYNH NGUYEN,

Respondent.

No. H-4547 SAC

ORDER GRANTING UNRESTRICTED LICENSE

On March 8, 2007, 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 May 30, 2007, and Respondent has operated as a restricted licensee since that time.

On March 4, 2010, 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

///

1 an unrestricted real estate salesperson license and that it would not be against the public interest
2 to issue said license to Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of
4 restrictions is granted and that a real estate salesperson license be issued to Respondent subject to
5 the following understanding and conditions:

6 1. The license issued pursuant to this order shall be deemed to be the first
7 renewal of Respondent's real estate salesperson license for the purpose of applying the provisions
8 of Section 10153.4.

9 2. Within twelve (12) months from the date of this order Respondent shall:

10 (a) Submit a completed application and payment of the appropriate fee for a
11 real estate salesperson license, and

12 (b) Submit evidence of having taken and successfully completed the courses
13 specified in subdivisions (a) (1), (2), (3), (4) and (5) of Section 10170.5 of the Real Estate Law
14 for renewal of a real estate license.

15 3. Upon renewal of the license issued pursuant to this order, Respondent
16 shall submit evidence of having taken and successfully completed the continuing education
17 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate
18 license.

19 This Order shall become effective immediately.

20 IT IS SO ORDERED

21 12/11/2000
22 JEFF DAVIS
23 Real Estate Commissioner
24 
25
26
27

FILED
MAR -9 2007

By K. Contreras

In the Matter of the Application of)
)
 THUAN HUYNH NGUYEN,)
)
 Respondent.)
)

N-2006100941

The Proposed Decision dated February 5, 2007, 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 exception:

The preamble of the ORDER on Page 7 of the Proposed

"Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued pursuant to Section 10156.5 of the Business and Professions Code. The restricted license shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:"

The application for a real estate salesperson license but the right to a restricted real estate salesperson is granted to Respondent. There is no statutory provision on when a new application may be made for an unrestricted license. . Petition for the removal of restrictions

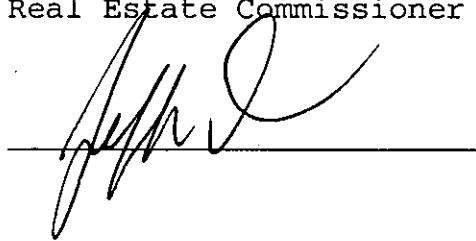
from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

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 Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon
on March 29, 2007.

IT IS SO ORDERED 38, 2007.

JEFF DAVI
Real Estate Commissioner

A handwritten signature in dark ink, appearing to read 'Jeff Davi', is written over a horizontal line.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

THUAN HUYNH NGUYEN,

Respondent.

Case No. H-4547 SAC

OAH No. N2006100941

PROPOSED DECISION

Administrative Law Judge Ann Elizabeth Sarli, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California, on January 10, 2007.

Mary F. Clarke, Real Estate Counsel, represented the Department of Real Estate.

Thuan Huynh Nguyen appeared and was represented by William H. Korup, Attorney at Law.

The matter was submitted on January 10, 2007.

FACTUAL FINDINGS

1. Charles W. Koenig, Deputy Real Estate Commissioner, Department of Real Estate (the Department), made the charges and allegations contained in the Statement of Issues in his official capacity. The Statement of Issues was filed and served on Thuan Huynh Nguyen (respondent) on October 5, 2006. Respondent timely filed a Notice of Defense on Application in response to the Statement of Issues. The Department has jurisdiction to issue, deny the issuance of, or issue on a restricted basis any real estate salesperson license in the State of California.¹

¹ Business and Professions Code sections 480, 10152 and 10156.

2. Respondent filed an application for a real estate salesperson's license with the Department on April 3, 2006. The application is subject to the provisions of Business and Professions Code section 10153.4.

3. The Department's official records as of October 23, 2006, reflect that respondent has not completed the courses required by Business and Professions Code section 10153.4.

4. On July 21, 2000, in the Superior Court, County of Santa Clara, respondent was convicted upon his plea of guilty of a violation of Penal Code section 594 (a)/ (b) (2) (A), vandalism less than \$400, a misdemeanor. At that time he was also convicted of a violation of Penal Code section 273.5, subdivision (a), intentional infliction of corporal injury on a spouse or cohabitant, a felony. Respondent was sentenced to serve two years in jail, and placed on three years of formal probation/parole. He served 10 months in prison and was paroled on November 24, 2002. He successfully completed three years of parole and was discharged from parole on September 21, 2005.

5. The facts leading to the convictions were drawn from respondent's evidentiary hearing testimony and his statement to the Department contained in his Confidential Report of Interview and Conviction Details Report. There was no evidence of the events leading to the conviction contained in the police report or in other evidence. Respondent's convictions arose from a dispute with his ex-girlfriend, the mother of his two children. On May 26, 2000, respondent's ex-girlfriend located him at his brother's house. Respondent was there with another woman. His ex-girlfriend became enraged and attacked them. Respondent pushed her to the ground and slapped her. He let her get up and she attacked him again. He slapped her repeatedly, pushed her away and ran outside. Her car was blocking his. He kicked the side view mirror, destroying it. Respondent testified that both he and his ex-girlfriend sustained bruises, but neither required medical care.

6. Respondent was a credible witness. He admitted that he was wrong and that he should have walked away from his ex-girlfriend. He recognized that he was much stronger than she and that his anger got the best of him. He completed anger management classes, a 52-week domestic violence class and parenting classes since his conviction. He has learned a lot from these classes, about how to deal appropriately with frustration and anger. Respondent has also obtained sole custody of his children. He and his fiancé live together and he is responsible for the support of the children. He owes back child support to his ex-girlfriend for the time he spent in prison. He is making payments to her and is current with the payments. He emphasized that his children are his focus in life and he will never again do anything to endanger his relationship with them. His remorse and change in attitude were persuasive.

7. Respondent submitted extensive evidence that his conduct was an aberration and that he has rehabilitated himself substantially during the last six years. At the time of his conviction, respondent was an electronics technician, working for IMS Medical Equipment Services. He lost his job due to the conviction and imprisonment. After he was released, he

began working at TRIUS Diagnostics Inc. as a field service technician. He worked in that position for three and a half years. He submitted a letter from a client attesting to his excellent work and trustworthiness.

8. In September 2005, respondent took a position with FN Financial as an escrow coordinator. He currently works in this position and enjoys the work. He deals with clients over the phone every day and has not had problems with handling stressful or frustrating situations. He works with over 30 co-employees and has not had any difficulty working with others.

9. The Office Manager at FN Financial wrote that respondent is an honest and respectful employee who does an excellent job as an escrow coordinator. Arnold Haro, the CEO and owner of FN Financial and First National Real Estate, testified persuasively. He has known respondent since respondent was a high school student in the early 1990's. He knows respondent to be a peaceable person who is responsible and who has studied hard for his real estate license and his electronics technician certificate. Respondent and his family lived with Mr. Haro and his family for six months following respondent's release from prison. Respondent worked, studied hard and took good care of his children. Mr. Haro is willing to employ respondent as a real estate agent and to closely supervise him.

10. Respondent's landlady testified credibly that he is a good tenant, pays his bills on time and treats her, his family and those around him with courtesy and respect.

11. Interpersonal conflict is inevitable in professional real estate practice. Real estate salespersons often face stressful and frustrating situations and angry, contentious persons. A real estate salesperson is required to manage or resolve conflict and contentiousness without resort to physical force. Real estate licensees must be able to disengage and seek outside help if necessary when conflict arises. The real estate licensee is expected to be able to use good and prudent judgment at all times when dealing with difficult situations or persons. In addition, licensees occupy a position of trust relative to persons with whom they deal. Respondent has shown that he can now be trusted to control his emotions and to work professional with members of the public.

LEGAL CONCLUSIONS

1. In application matters such as this, the burden of proof is on the applicant to prove his fitness for issuance of the license he seeks.²

2. The court in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, 567 found that "At least since *Arneson v. Fox* was decided in 1980, DRE has been on notice that the moral turpitude requirement placed it under a dual burden of proof in

² Business and Professions Code section 485, Government Code section 11504, *Martin v. Alcoholic Beverage Appeals Board* (1950) 52 Cal.2d 259, 265.

misdemeanor conviction cases: It must prove *both* that the crime involved moral turpitude *and* that it bore a substantial relationship to the duties of a real estate licensee.” The court stated further that, “In sum, we hold that section 490 does not provide independent statutory authorization for DRE to suspend or revoke the license of a person based on his or her conviction of a crime. Only section 10177, subdivision (b) grants DRE that authority. The latter provision does not authorize DRE to take disciplinary action against a licensee convicted of a misdemeanor, unless the offense involves moral turpitude.” (*Id.*) This reasoning is equally applicable when the issue involves the issuance of the license where the alleged cause for denial is one or more misdemeanor convictions.³ In order to establish cause to deny respondent’s application, the Department must first prove that respondent’s crimes involved moral turpitude as set forth in Business and Professions Code section 10177, subdivision (b). It must then establish that his crimes are substantially related to the qualifications, functions or duties of a real estate licensee.

3. California Code of Regulations, title 10, section 2910 provides, in pertinent parts:

(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:

[¶]...[¶]

(8) Doing of any unlawful act with... the intent or threat of doing substantial injury to the person or property of another.

[¶]...[¶]

³ Business and Professions Code section 480 provides in pertinent part:

A board may deny a license regulated by this code on the grounds that the applicant has done one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or a 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 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.

(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.

4. Business and Professions Code section 10177, provides 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, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock 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 involving moral turpitude, 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.

5. Respondent's conviction for a violation of Penal Code section 273.5, subdivision (a), intentional infliction of corporal injury on a spouse or cohabitant, is a felony, and a crime of moral turpitude, which is substantially related to the qualifications, functions and duties of a real estate salesperson licensee. (*People v Rodriguez* 5 Cal.App.4th 1398.) Respondent's conduct reflected a threat or intent to inflict substantial injury, within the meaning of California Code of Regulations, title 16, section 2910, subdivision (8). Exercise of poor judgment when handling conflict and violation of a trust relationship is conduct substantially related to the qualifications, functions and duties of a real estate salesperson.

6. Respondent's conviction for a misdemeanor violation of Penal Code section 594 (a)/ (b) (2) (A), vandalism less than \$400, is a crime of moral turpitude, primarily because an element of the offense is malice. (*People v. Campbell* (1994) 23 Cal. App. 4th 1488.) Vandalism is a crime which is substantially related to the qualifications, functions

and duties of a real estate salesperson licensee. A real estate licensee has access to the homes and household property of sellers and is responsible for respecting and at times safeguarding that property.

7. As set forth in the Factual Findings 1 through 5, and in Legal Conclusions 1 through 6, separate legal cause exists within the meaning of Business and Professions Code section 10177, subdivision (b), for the Department to deny the issuance of a real estate salesperson license for the domestic violence conviction, and the vandalism conviction.

8. Once cause for denial is proved, the applicant must produce persuasive evidence that he is rehabilitated and is a person of good character such that the license should issue. The Department has enacted a nonexhaustive list of criteria in its Regulations against which to weigh and evaluate an applicant's evidence of rehabilitation.⁴ Respondent's evidence of rehabilitation and good character was evaluated by these criteria.

⁴ California Code of Regulations, title 10, section 2911 provides:

"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) 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.
- (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.

9. As set forth in Factual Findings 6 through 11, respondent has demonstrated that he has made great strides towards rehabilitation in the six years and a half years since his conviction. However, respondent has only been free from incarceration and/or court supervision since September 21, 2005. Therefore, respondent has not demonstrated the sustained period of rehabilitation necessary to warrant issuance of an unrestricted license. However, it would not be contrary to the public interest at this time to grant respondent a restricted license, on terms and conditions.

ORDER

Modified

The application of Thuan Huynh Nguyen to the Department of Real Estate for the issuance of a real estate salesperson license is DENIED. However, the denial is stayed and a conditional and restricted real estate salesperson license shall be issued to Mr. Nguyen pursuant to section 10156.5 of the Business and Professions Code, if he makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Mr. Nguyen shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of 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 which is substantially related to respondent's fitness or capacity as a real estate licensee.

(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."

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, Regulations 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 two (2) years have elapsed from the effective date of this Decision.

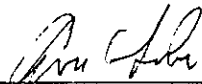
4. During the period of issuance of the restricted license, respondent's employment shall be limited to a supervising broker approved in advance of the employment by the Department. Respondent shall submit with any application for license under any employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within eighteen (18) months of the issuance of the restricted license under the provisions of section 10153.4 of the Business and Professions Code, submit evidence satisfactory to the Real Estate Commissioner of successful completion, at an accredited institution, of a course in real estate practices, and one of the courses listed in Business and Professions Code 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 present satisfactory evidence of successful completion of these courses, the restricted license shall be automatically suspended effective eighteen (18) months after issuance of the restricted license. The suspension shall not be lifted until respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the respondent of the lifting of the suspension.

DATED: July 5, 2007



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

MARY F. CLARKE, Real Estate Counsel (SBN 186744)
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FILED
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DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
THUAN HUYNH NGUYEN,)
Respondent.)

H-4547 SAC

STATEMENT OF ISSUES

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against THUAN HUYNH NGUYEN (herein "Respondent") is informed and alleges as follows:

I

Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues against Respondent in his official capacity.

II

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about April 3, 2006, with the knowledge and understanding that any license issued as a result of said

1 application would be subject to the conditions of Section 10153.4
2 of the Business and Professions Code (herein "Code").

3 III

4 On or about July 21, 2000, in the Superior Court of
5 California, County of Santa Clara, Respondent was convicted of
6 the crime of Infliction Of Corporal Injury Resulting In A
7 Traumatic Condition On The Mother/Father Of Defendant's Child in
8 violation of Section 273.5(a) of the Penal Code, a felony, and
9 Vandalism Less Than \$400 in violation of Section 594(A)/(B)(2)(A)
10 of the Penal Code, a misdemeanor, both crimes involve moral
11 turpitude that bear a substantial relationship under Section
12 2910, Title 10, California Code of Regulations, to the
13 qualifications, functions, or duties of a real estate licensee.

14 IV

15 Respondent's criminal convictions, described in
16 Paragraph III, above, constitute cause for denial of Respondent's
17 application for a real estate salesperson license pursuant to the
18 provisions of Sections 480(a) and 10177(b) of the Code.

19 WHEREFORE, Complainant prays that the above-entitled
20 matter be set for hearing and, upon proof of the charges
21 contained herein, that the Commissioner refuse to authorize the
22 issuance of, and deny the issuance of a real estate salesperson
23 license to Respondent, and for such other and further relief as
24 may be proper under other provisions of law.

25
26
27 Dated at Sacramento, California
this 18th day of September, 2006.


CHARLES W. KOENIG
Deputy Real Estate Commissioner