

FILED

APR 18 2012

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

VINYO PHILLIP KETSAVONG,

Respondent.

No. H-5709 SAC  
OAH No. 2011110584

ORDER GRANTING RECONSIDERATION

On February 21, 2012, a Decision was rendered in the above-entitled matter. The Decision was to become effective at 12 o'clock noon on March 19, 2012.

An order staying the effective date was issued March 19, 2012 staying the effective date for a total period of thirty days until 12 o'clock noon on April 18, 2012.

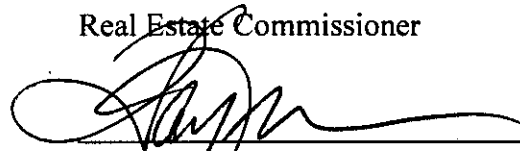
On March 15, 2012, Respondent petitioned for reconsideration of the Decision of February 21, 2012 and Respondent submitted argument in support of his petition for reconsideration. Written argument has been submitted on behalf of Complainant.

I have given careful consideration to the record in this case, including the written argument offered by Respondent and Complainant. I find there is good cause to reconsider the Decision of February 21, 2012. Reconsideration is hereby granted.

IT IS SO ORDERED

4/17/2012

Real Estate Commissioner



By WAYNE S. BELL  
Chief Counsel

FILED

MAR 19 2012

DEPARTMENT OF REAL ESTATE

By L. Jover

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of )  
 ) NO. H-5709 SAC  
VINYO PHILLIP KETSAVONG, )  
 ) OAH NO. 2011110584  
Respondent. )  
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ORDER STAYING EFFECTIVE DATE

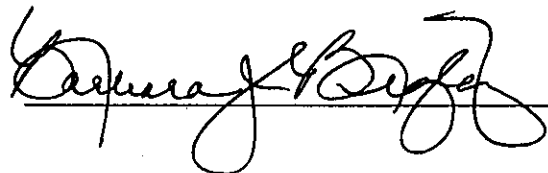
On February 21, 2012, a Decision was rendered in the above-entitled matter to become effective on March 19, 2012.

On March 15, 2012, Respondent petitioned for reconsideration of the Decision of February 21, 2012.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of February 21, 2012, shall become effective at 12 o'clock noon on April 18, 2012.

DATED: 3/19/12

BARBARA J. BIGBY  
Acting Real Estate Commissioner



**FILED**

FEB 27 2012

Department of Real Estate

BY: 

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of

VINYO PHILLIP KETSAVONG,

Respondent.

)  
) NO. H-5709 SAC  
)

) OAH NO. 2011110584  
)  
)

DECISION

The Proposed Decision dated January 24, 2012, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of crimes.

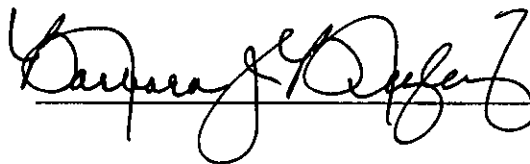
The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on MAR 19 2012.

IT IS SO ORDERED

2/21/12

BARBARA J. BIGBY  
Acting Real Estate Commissioner



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

In the Matter of the Accusation Against:

**VINYO PHILLIP KETSAVONG,**

Respondent.

Case No. H-5709 SAC

OAH No. 2011110584

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on January 13, 2012, in Sacramento, California.

Richard K. Uno, Real Estate Counsel, represented complainant Tricia D. Sommers, Deputy Real Estate Commissioner of the State of California.

Respondent Vinyo Phillip Ketsavong represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on January 13, 2012.

**SUMMARY**

Complainant seeks to discipline respondent's real estate broker license on the grounds that respondent was convicted of drunk driving on two separate occasions, failed to disclose the first conviction on his application to renew his license, and has had his insurance broker's license disciplined by the Department of Insurance. Cause exists to discipline his license on the first two grounds only. Respondent did not sufficiently demonstrate that he is capable of performing his licensed duties in a manner which is consistent with public safety, health, and welfare, even on a restricted basis. Therefore, his license is revoked.

## FACTUAL FINDINGS

1. On July 7, 2005, the Department of Real Estate (Department) issued real estate broker license number B/01343219 to respondent. The license expired on July 6, 2009, and was renewed late on October 6, 2009. The license expires October 5, 2013, unless renewed or revoked.

2. On November 1, 2011, complainant, acting solely in her official capacity as Deputy Real Estate Commissioner of the State of California, filed an accusation seeking to discipline respondent's license on the grounds that respondent: 1) was convicted of driving under the influence of alcohol on two occasions; 2) failed to disclose the first conviction on his application to renew his license; and 3) had his insurance broker's license disciplined by the Department of Insurance.

### *Prior Convictions*

3. On August 13, 2007, in the Superior Court of the State of California, in and for the County of Sacramento, in Case No. 07T00718, respondent pled nolo contendere to, and was convicted of, a misdemeanor violation of Vehicle Code section 23152, subdivisions (a), driving under the influence of alcohol, and (b), driving with a blood alcohol content of .08 percent or greater. Imposition of judgment and sentence was suspended, and respondent was placed on three years informal probation. He was ordered to serve 48 hours in the Sacramento County Jail, with an additional 10 consecutive days added based upon the high rate of speed he was traveling when arrested. He was ordered to pay fines, penalties, and assessments in the total sum of \$2,059.87 and enroll in, and complete, the First Offender drinking and driving program. He was ordered not to drive a motor vehicle with any measurable amount of alcohol in his system.

4. The factual basis for respondent's conviction arose out of his arrest by the Elk Grove Police Department for suspicion of driving under the influence of alcohol on January 8, 2007. Respondent was initially stopped for speeding. As the police officer approached respondent's car, the officer noticed that respondent was exhibiting objective signs of being under the influence of alcohol. Respondent failed to perform a series of field sobriety tests to the officer's satisfaction, and was arrested. Respondent's blood alcohol content measured .14/.15 percent on an intoxilyzer machine.

5. On July 26, 2010, in the Superior Court of the State of California, in and for the County of Sacramento, in Case No. 10T02303, respondent pled nolo contendere to, and was convicted of, a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content of .08 percent or greater. He also admitted his prior drunk driving conviction. Imposition of judgment and sentence was suspended, and respondent was placed on four years informal probation. He was ordered to serve 24 days in the Sacramento County Jail. He was

also ordered to pay fines, penalties, and assessments in the total amount of \$2,370.51, \$100 of which was suspended if he did not violate probation, and enroll in, and complete, the SB 38 drunk driving program.

6. The factual basis for respondent's conviction arose out of his arrest by the Sacramento Police Department for suspicion of driving under the influence of alcohol on April 24, 2010. A police officer responded to the scene of a car accident involving respondent and noticed that respondent was exhibiting objective signs of being intoxicated. Respondent failed to perform a series of field sobriety tests to the officer's satisfaction. Respondent refused to take a preliminary alcohol screening test, and was arrested. He then refused to provide a blood, breath, or urine sample for testing, so he was transported to the hospital for a forced blood draw. His blood alcohol content measured .17 percent.

#### *Failure to Disclose Conviction*

7. Sometime after July 6, 2009, but before October 6, 2009, respondent submitted an application to renew his broker license. One of the questions on the application asked:

WITHIN THE SIX-YEAR PERIOD PRIOR TO FILING THIS APPLICATION, HAVE YOU BEEN CONVICTED OF A MISDEMEANOR OR FELONY? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY.

Respondent answered the question by placing an "x" in the box for "NO."

8. Respondent was convicted of misdemeanor drunk driving on August 13, 2007 – within six years of when he submitted his application. (Factual Finding 3.) At the hearing, he explained that he did not know drunk driving was a crime. He provided the same explanation on the Conviction Detail Report he submitted to the Department. His explanation was not credible. Respondent made a material misstatement of fact on his application to renew his broker license.

#### *Discipline of Insurance Broker's License*

9. Complainant alleged that the Insurance Commissioner has filed an accusation seeking to discipline respondent's insurance broker's license. The only evidence in support of the allegation, however, is a certified copy of the accusation that was filed. Respondent testified that no administrative hearing was held on the accusation, and his insurance broker's license has never been disciplined. Therefore,

there is insufficient evidence to support a factual finding that respondent's insurance broker's license has been disciplined by the Department of Insurance.

*Factors in Mitigation, Aggravation, and Rehabilitation*

10. Respondent is 42 years old. He is unmarried and has visitation rights with his 14-year-old daughter, who lives with her mother. He has owned the Allgenes Insurance Agency since 1997 and sells insurance, handles real estate transactions, and prepares tax returns.

11. Respondent has not consumed any alcohol since April 24, 2010, the night of his last arrest for drunk driving. However, when asked what his "sobriety date" was, he was unfamiliar with that term. Additionally, he has not attended any alcohol treatment or counseling programs, other than those which were required as a result of his two convictions. He will complete the Second Offender Program on March 6, 2012.

12. The Department has adopted criteria for determining whether a licensee has been rehabilitated since committing the crimes for which discipline is sought. (Cal. Code of Regs., tit. 10, § 2912.) Two such criteria which are relevant here are the passage of at least two years since the most recent conviction and a change in attitude since the commission of the crime. (Cal. Code of Regs., tit. 10, § 2912, subds. (a) and (m); see, *In re Andreani* (1939) 14 Cal.2d 736, 749 [existence of rehabilitation is difficult to establish affirmatively, "but its nonexistence may be 'proved' by a single act."])

13. Respondent's last conviction occurred on July 26, 2010. (Factual Finding 5.) He was placed on four years informal probation, and he has more than one-half of his term of probation remaining. But an accurate assessment of one's rehabilitation requires a period of assessment during which he is not on probation or parole. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

14. Additionally, both of respondent's convictions involved his drinking and driving, and both times he had a high blood alcohol content – the last time it was more than double the legal limit for driving. (Factual Findings 4 and 6.) Yet he has not participated in any alcohol treatment or counseling programs other than that which were ordered by the criminal courts. (Factual Finding 11.) While he is to be commended for remaining sober since the night of his last arrest, his lack of familiarity with the term "sobriety date" and voluntary participation in any alcohol treatment or counseling programs does not establish a sufficient change in his attitude to consider him "rehabilitated."

15. Respondent's lack of rehabilitation since his most recent conviction is sufficient to justify revoking his license. But he also made a material misstatement of fact on his application to renew his broker license. (Factual Findings 7 and 8.)

"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.)

16. As discussed below, cause exists to discipline respondent's real estate broker license based on his two drunk driving convictions and failure to disclose his first conviction on his application to renew his license. The above evidence demonstrates that he is not capable of engaging in the duties of a real estate broker in a manner which is consistent with public health, safety, and welfare, even on a restricted basis. Therefore, respondent's license should be revoked.

### LEGAL CONCLUSION

1. A real estate license may be disciplined if the holder has been convicted of a crime which is substantially related to the qualifications, functions, or duties of a licensee. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b).) Respondent was convicted of drunk driving on two separate occasions. (Factual Findings 3 and 5.) The convictions collectively are substantially related as a matter of law. (Cal. Code of Regs., tit. 10, § 2910, subd. (a)(11) [two or more alcohol-related convictions, at least one of which involves driving, are substantially related].) Therefore, cause exists to discipline respondent's broker license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), jointly and severally.

2. A real estate license may be disciplined if the holder obtained a renewal of his license based upon a material misstatement of fact in his application for renewal. (Bus. & Prof. Code, § 10177, subd. (a).) For the reasons discussed in Factual Findings 7 and 8, respondent obtained a renewal of his broker license based upon his misrepresentation that he had not been convicted of any crimes within six years of his submission of his application.<sup>1</sup> Therefore, cause exists to discipline respondent's broker license pursuant to Business and Professions Code section 10177, subdivision (a).

3. A real estate license may be disciplined when the holder has had another professional license issued by a government entity disciplined for conduct which, if committed by him while a real estate licensee, would constitute grounds for disciplining his real estate license. (Bus. & Prof. Code, § 10177, subd. (f).) Complainant did not prove that respondent's insurance broker license has been disciplined. (Factual Finding 9.) Therefore, no cause exists to discipline

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<sup>1</sup> While complainant alleged that respondent's misstatement would constitute grounds for discipline pursuant to Business and Professions Code section 480, subdivision (c), as well, that statute pertains only to grounds for which an application may be denied.



respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (f).

4. Cause exists to discipline respondent's real estate broker license for the reasons discussed in Legal Conclusions 1 and 2, jointly and severally. When all of the evidence is considered, he has not provided sufficient evidence to justify allowing him to keep his license, even on a restricted basis, for the reasons discussed in Factual Findings 12 through 16. Therefore, his license must be revoked.

#### ORDER

All licenses and licensing rights of respondent Vinyo Phillip Ketsavong under the Real Estate Law are REVOKED.

DATED: January 24, 2012



COREN D. WONG  
Administrative Law Judge  
Office of Administrative Hearings

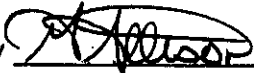
**FILED**

RICHARD K. UNO, Counsel (SBN 98275)  
Department of Real Estate  
P. O. Box 187007  
Sacramento, CA 95818-7007

**November 1, 2011**

DEPARTMENT OF REAL ESTATE

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(916) 227-2380 (Direct)

By 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of )

VINYO PHILLIP KETSAVONG, )

Respondent. )

H-5709 SAC

ACCUSATION

The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against VINYO PHILLIP KETSAVONG, (Respondent), is informed and alleges as follows:

1

Complainant makes this Accusation against Respondent in her official capacity.

2

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (the Code) as a real estate broker.

3

In response to Question 4 of the Broker Renewal Application, to wit: "Within the six-year period prior to filing this application, have you been convicted of a misdemeanor or felony? Convictions expunged under Penal Code Section 1203.4 must be disclosed. However,

1 you may omit traffic citations which do not constitute a misdemeanor or felony”, Respondent  
2 concealed and failed to disclose the convictions described in Paragraph 5 below.

3  
4 4

5 On or about July 26, 2010, in the Superior Court of the State of California, County  
6 of Sacramento, Case No. 10T02303, Respondent was convicted of violating Section 23152(b) of  
7 the California Vehicle Code (Driving Under the Influence of Alcohol or a Drug), while admitting  
8 a prior, a misdemeanors and crime which bears a substantial relationship under Section 2910,  
9 Title 10, California Code of Regulations (Regulations), to the qualifications, functions, or duties  
10 of a real estate licensee.

11 FACTORS IN AGGRAVATION

12 5

13 On or about August 13, 2007, in the Superior Court of the State of California,  
14 County of Sacramento, Case No. 07T00718, Respondent was convicted of violating Sections  
15 23152(a) and 23152(b) of the California Vehicle Code (Driving Under the Influence of Alcohol  
16 or a Drug), a misdemeanor.

17 PRIOR ADMINISTRATIVE PROCEEDINGS

18 6

19 On May 19, 2011, the Insurance Commissioner filed an Accusation, No. LCB  
20 0433-AP against Respondent seeking the revocation or suspension of his Insurance license on the  
21 grounds that his criminal convictions, mentioned in Paragraphs 4 and 5, above, constitute a  
22 pattern of repeated and willful disregard of the law and are substantially related to the duties and  
23 functions of an insurance agent pursuant to Section 2183.2(b) (8) of the Regulations. The  
24 accusation further alleges grounds pursuant to Section 1729.2 of the Insurance Code to suspend  
25 or revoke Respondent’s license due to his failure to disclose his criminal convictions, described  
26 in Paragraph 5, above, in his renewal application.

27 ///

///

The facts alleged in Paragraph 4 and 5, above, constitute cause under Section 10177(b) (Further Grounds for Disciplinary Action- Conviction of Crime) and Section 490 (Conviction of Substantially Related Crime) of the Code for suspension or revocation of Respondent's license under the Real Estate Law.

Respondent's failure to reveal in said application the convictions set forth in Paragraph 5, above, constitutes the procurement of or attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which failure is cause for denial of Respondent's application for a real estate salesperson license pursuant to the provisions of Section 480(c) (False Statement) and 10177(a) (Further Grounds for Disciplinary Action-Attempt to Procure License Through Fraud, etc.) of the Code.

The Administrative Proceeding described in Paragraph 6, above, constitutes cause under Section 10177(f) of the code for the suspension or revocation of Respondent's real estate license under the Real Estate Law.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a Decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Code, and for such other and further relief as may be proper under provisions of law.

  
TRICIA D. SOMMERS  
Deputy Real Estate Commissioner

Dated at Sacramento, California

this 26<sup>th</sup> day of October, 2011.