

FILED

MAY 01 2000

DEPARTMENT OF REAL ESTATE

By Jean R. Runch

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
CUC HUU NGUYEN,)
Respondent.)

No. H-7388 SF

ORDER DENYING REINSTATEMENT OF LICENSE

On February 18, 1997, a Decision After Rejection was rendered revoking the real estate broker license of Respondent.

On February 2, 1999, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate broker license. Respondent has no experience acting in a fiduciary capacity since the effective

1 date of the Decision in this matter. Consequently, Respondent is
2 not able to present any evidence of compliance with Section 2911
3 (j), Title 10, California Code of Regulations.

4 I am satisfied, however, that it will not be against
5 the public interest to issue a restricted real estate salesperson
6 license to Respondent since Respondent will have an opportunity
7 to demonstrate rehabilitation while operating under the close
8 supervision of a real estate broker.

9 NOW, THEREFORE, IT IS ORDERED that Respondent's
10 petition for reinstatement of his real estate broker license is
11 denied.

12 A restricted real estate salesperson license shall be
13 issued to Respondent pursuant to Section 10156.5 of the Business
14 and Professions Code, if Respondent satisfies the following
15 conditions within nine (9) months from the date of this Order:

16 1. Submittal of a completed application and payment of
17 the fee for a real estate salesperson license.

18 2. Submittal of evidence of having, since the most
19 recent issuance of an original or renewal real estate license,
20 taken and successfully completed the continuing education
21 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
22 for renewal of a real estate license.

23 The restricted license issued to Respondent shall be
24 subject to all of the provisions of Section 10156.7 of the
25 Business and Professions Code and to the following limitations,
26 conditions and restrictions imposed under authority of Section
27 10156.6 of that Code.

1 1. The restricted license issued to Respondent may be
2 suspended prior to hearing by Order of the Real Estate
3 Commissioner in the event of Respondent's conviction or plea of
4 nolo contendere to a crime which is substantially related to
5 Respondent's fitness or capacity as a real estate licensee.

6 2. The restricted license issued to Respondent may be
7 suspended prior to hearing by Order of the Real Estate
8 Commissioner on evidence satisfactory to the Commissioner that
9 Respondent has violated provisions of the California Real Estate
10 Law, the Subdivided Lands Law, Regulations of the Real Estate
11 Commissioner or conditions attaching to the restricted license.

12 3. Respondent shall not be eligible to apply for the
13 issuance of an unrestricted real estate license nor the removal
14 of any of the limitations, conditions or restrictions of a
15 restricted license until one (1) year has elapsed from the date
16 of the issuance of the restricted license to respondent.

17 4. Respondent shall submit with any application for
18 license under an employing broker, or any application for
19 transfer to a new employing broker, a statement signed by the
20 prospective employing broker on a form approved by the Department
21 of Real Estate which shall certify:

22 a. That the employing broker has read the Decision of
23 the Commissioner which granted the right to a
24 restricted license; and

25 b. That the employing broker will exercise close
26 supervision over the performance by the restricted

27 ///

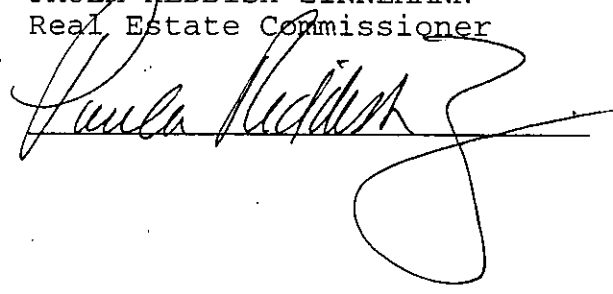
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licensee relating to activities for which a real estate license is required.

This Order shall become effective at 12 o'clock
noon on May 22, 2000.

DATED: April 10, 2000.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner



FILED
AUG 5 1997

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
CUC HUU NGUYEN) NO. H-7388 SF
Respondent.) OAH NO. N-9610126

ORDER DENYING RECONSIDERATION

On June 4, 1997, a Decision After Rejection was rendered in the above-entitled matter. The Decision is to become effective August 7, 1997.

On July 7, 1997, Respondent petitioned for reconsideration of the Decision of June 4, 1997.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of June 4, 1997 and reconsideration is hereby denied.

IT IS HEREBY ORDERED 7/29, 1997.

JIM ANTT, JR.
Real Estate Commissioner

J. Antt Jr.

by Kathleen Contreras

* * *

ORDER STAYING EFFECTIVE DATE

DATED: 7/7, 1997.

John C. Smith

FILED
JUN 1 8 1997

DEPARTMENT OF REAL ESTATE

By Shelly Day

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
CUC HUU NGUYEN,) NO. H-7388 SF
Respondent.) OAH NO. N-9610126

DECISION AFTER REJECTION

The matter came for hearing before Alfred P. Knoll,
Administrative Law Judge of the Office of Administrative Hearings,
in San Francisco, California, on December 6, 1996.

Larry A. Alamao, Counsel, represented the Complainant.

Respondent was present and was represented by Attorney,
Frank Ubhaus.

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

On January 22, 1997, the Administrative Law Judge
submitted a Proposed Decision which I declined to adopt as my
Decision herein. Pursuant to Section 11517(c) of the Government
Code of the State of California, Respondent was served with notice

1 of my determination not to adopt the Proposed Decision of the
2 Administrative Law Judge along with a copy of said Proposed
3 Decision. Respondent was notified that the case would be decided
4 by me upon the record, the transcript of proceedings held on
5 December 6, 1996, and upon any written argument offered by
6 Respondent and Complainant.

7 Respondent and Complainant have submitted written
8 argument.

9 I have given careful consideration to the record in this
10 case including the transcript of proceedings of on December 6,
11 1996, and the written arguments.

12 The following shall constitute the Decision of the Real
13 Estate Commissioner in this proceeding:

14 The Findings of Fact and Determination of Issues in the
15 Proposed Decision dated January 22, 1997 are hereby adopted as a
16 part of this Decision with the following deletions and additions:

17 Paragraph III of the Determination of Issues is not
18 adopted as a part of this Decision.

19 Respondent was a central figure in a conspiracy to
20 defraud a bank. That conduct resulted in losses to the bank of
21 \$148,000. There is no evidence, that any restitution of that
22 amount has been paid. Respondent will be on probation until
23 March, 1999 and owes a substantial amount in restitution. I am
24 not satisfied that Respondent presents no risk to the public even
25 under an arrangement where he is closely supervised.

26 ///

27 ///



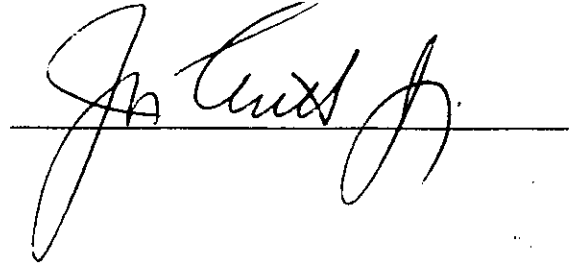
ORDER

All licenses and licensing rights of Respondent
CUC HUU NGUYEN under the Real Estate Law are revoked.

This Order shall become effective at 12 o'clock
noon on July 8, 1997.

DATED: 6/9/97

JIM ANTT, JR.
Real Estate Commissioner



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FILED
FEB 21 1997
DEPARTMENT OF REAL ESTATE

By Laurie A. Zia

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
CUC HUU NGUYEN,) NO. H-7388 SF
Respondent.) N-9610126

NOTICE

TO: CUC HUU NGUYEN, Respondent
and
FRANK UBHAUS, his Counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated January 22, 1997, of the Administrative Law Judge is
not adopted as the Decision of the Real Estate Commissioner. A
copy of the Proposed Decision dated January 22, 1997, is attached
for your information.

In accordance with Section 11517(c) of the Government
Code of the State of California, the disposition of this case will
be determined by me after consideration of the record herein
including the transcript of the proceedings held on December 6,
1996, and any written argument hereafter submitted on behalf of

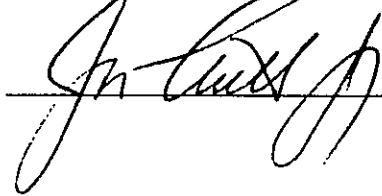
1 respondent and complainant.

2 Written argument of respondent to be considered by me
3 must be submitted within 15 days after receipt of the transcript
4 of the proceedings of December 6, 1996, at the Sacramento office
5 of the Department of Real Estate unless an extension of the time
6 is granted for good cause shown.

7 Written argument of complainant to be considered by me
8 must be submitted within 15 days after receipt of the argument of
9 respondent at the Sacramento office of the Department of Real
10 Estate unless an extension of the time is granted for good cause
11 shown.

12 DATED: 2-18-97

13 JIM ANTT, JR.
14 Real Estate Commissioner

15 

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of))	Case No. H-7388 SF
CUC HUU NGUYEN,)	
)	
Respondent)	OAH No. N 9610126
<hr/>		

PROPOSED DECISION

On December 6, 1996, in Oakland, California, Alfred P. Knoll, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Larry A. Alamao, Esq., counsel for the Department of Real Estate, represented the complainant.

Respondent, CUC HUU NGUYEN ("Respondent"), appeared and was represented by attorney, Frank Ubhaus, 10 Almaden Boulevard, San Jose, California.

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

FINDINGS OF FACT

I

Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California, made the accusation in this matter in his official capacity.

II

Respondent was issued by the Department of Real Estate ("Department"), pursuant to Part 1 of Division 4 of the Business and Professions Code ("Code"), a real estate broker license No. 00674886, DBA Gold Medal, which will expire on April 4, 1997.

III

On October 11, 1995, in the United States District Court, Northern District of California, pursuant to a written plea agreement respondent pleaded to and was adjudged guilty of a violation of 18 United States Code Section 1344(2) (Bank Fraud), a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee.

IV

On March 27, 1996, respondent was sentenced to six months imprisonment on a work furlough program, thereafter he was placed on supervised release (probation) for a period of three years on condition that he serve six months home detention under the electronic monitoring program, pay restitution jointly with five co-defendants in the amount of \$148,000 and perform 100 hours of community service.

V

The facts and circumstances of the offense are noteworthy. In 1989 through a company ("Gold Medal") co-owned by respondent, he purchased controlling interest in 11 subdivided parcels of land on Maxey Avenue in San Jose ("Maxey") along with several other investors. Their purpose was to develop the parcels by building single family homes. Gold Medal obtained a construction loan which was guaranteed by respondent. Construction time was projected to be nine (9) months. Construction costs were projected to be approximately \$230,000 per home.

Due to delays, construction time was 18 months. Costs increased to over \$300,000 per home. As a result more money was borrowed. Moreover, by the time the project was completed a severe downturn in the economy and the Loma Prieta earthquake occurred making it virtually impossible to market the Maxey homes. The construction loan was due and interest was mounting. The investors were in trouble.

In an effort to pay the construction loan and salvage their investment, respondent and the other investors devised a plan. Each investor agreed to each purchase a Maxey home from Gold Medal which would generate enough money to repay the construction loan(s). However, not all investors were credit-worthy. Most did not have sufficient funds for the down payment required by the lenders. To solve this problem it was agreed after the initial purchase, Gold Medal would use the proceeds from each succeeding sale to make loans to remaining investors for their down payment. Because of lending regulations, the investor/borrower had to falsely represent the source of the down payment. It could not be borrowed money.

Whether from complicity or based upon the false information, each savings and loan company (World Savings, Home Savings and Glendale Savings) to whom application was proffered, made the requested loans and the sales were consummated as planned. Gold Medal paid the construction loan(s) and the investors were returned a portion of their capital. Eventually, however, four (4) of the purchases were lost to foreclosure resulting in losses to the savings and loan companies of approximately \$148,000.

Respondent did not make false representations on his personal loan application as he possessed the necessary money for his down payment. The home he purchased was not foreclosed, despite his personal loss of over \$400,000 in the Maxey project. Nonetheless, he was prosecuted as a keystone to the plan.

Respondent's attitude about his conviction and the underlying transaction is ambivalent. On the one hand he is unquestioningly contrite and accepts full responsibility for his conduct and its consequences. He also recognizes greed and personal gain were his principal motivation. On the other hand, he feels the savings and loan officials painted the practice of falsely portraying the source of down payments as ordinary and pedestrian, having little if any legal, moral or ethical consequence. In short he feels he was used and misled, but acknowledges he should have known better.

VI

Respondent's background is pertinent to the issues of mitigation and rehabilitation. He is 45 years old and has been married for 19 years. He is the father of three young boys. He came to the United States in 1975 as an "evacuee" during the last days of the Vietnamese war. In Vietnam and here he has involved himself in community activities and undertaken campaigns in the San Jose area to aid the homeless and crime victims.

Respondent is a family man. He possesses for the most part what appears to be good moral and community values. He is a devout Catholic and active in the San Jose community. The federal indictment was his first involvement with the law in any way.

In 1978 he obtained his real estate broker license and formed Gold Medal Realtors, eventually employing over 20 people. Since the initial issuance of his license neither he nor any member of his real estate firm has been the subject of any disciplinary action or civil litigation.

Respondent's brokerage business along with the economy dwindled away in the late 80's and early 90's. He has however, managed to remain gainfully employed operating his real estate brokerage business as a sole practitioner as well as a catering business. He appears to have worked through a severe financial crisis and paid all of his debts.

VII

Detailed, well written and laudatory letters of commendation were received on behalf of respondent (directed to the judge in the federal criminal case) from Ms. Tuyet Le (wife), Mr. Katsuji Kobata (former banker), Mr. William Tran (former colonel, Vietnamese army), Dr. Oanh Vu, M.D. (former Deputy Minister of Social Welfare in Vietnam), Mr. Dennis Brown (former attorney), Mr. Khoi Dao (friend). Each vouched for respondent's integrity, honesty, involvement in both the Vietnamese and San Jose communities and their friendship. All were aware of the nature of the proceedings in the federal court.

DETERMINATION OF ISSUES

I

Sections 490 and 10177(b) of the Code state, *inter alia*, that a real estate license may be suspended or revoked where it has been found that a licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

II

By reason of respondent's conviction of a violation of 18 United States Code Section 1344(2) (Bank Fraud), a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee, as set out in the FINDINGS, paragraphs III and IV, cause exists for the suspension or revocation of respondent's real estate broker license under sections 490 and 10177(b) of the Code.

III

Not adapted { Matters in mitigation, extenuation and rehabilitation as set out in the FINDINGS, paragraphs V, VI and VII have been considered in making the following order. Respondent's conduct appears to be an isolated instance of aberrant behavior. Therefore, it would not be contrary to the public interest to issue respondent a restricted real estate salesperson license.

ORDER

All licenses and licensing rights of respondent CUC HUU NGUYEN under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor 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 respondent 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.
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 years have elapsed from the effective date of this Decision.
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford

NOT ADOPTED

respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall submit with any application for license under an 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.

DATED: 1/22/97



ALFRED P. KNOLL
Administrative Law Judge
Office of Administrative Hearings

FILED
OCT 24 1996

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Laurie L. Zins

In the Matter of the Accusation of
CUC HUU NGUYEN,

Case No. H-7388 SF
OAH No. N-9610126

Respondent

NOTICE OF HEARING ON ACCUSATION

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, World Savings Tower, 1970 Broadway,
Second Floor, Oakland, CA 94612

on Friday, December 6th, 1996, at the hour of 10:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: October 24, 1996

By Larry Alamao
LARRY A. ALAMAO Counsel

1 LARRY A. ALAMAO, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6
7

FILED
SEP - 6 1996
DEPARTMENT OF REAL ESTATE

Laurie A. Zain

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 CUC HUU NGUYEN,) No. H-7388 SF
13 Respondent.) ACCUSATION
14 _____)

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against CUC HUU NGUYEN (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

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

24 II

25 The Complainant, Les R. Bettencourt, a Deputy Real
26 Estate Commissioner of the State of California, makes this
27 Accusation against Respondent in his official capacity.


III

On or about March 27, 1995, in the U. S. District Court for the Eastern District of California, Respondent was convicted of violation of Title 18, United States Code, Section 1344(2) (Bank Fraud), 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

The facts alleged above constitute cause under Sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent 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 Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at San Francisco, California,
this 28th day of August, 1996.