

FILED
MAR 22 2006

DEPARTMENT OF REAL ESTATE

By *Jean Hunt*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-7791-SF

LONG THANH LY,

Respondent.

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 19, 2000, a Decision was issued herein revoking the real estate salesperson license of Respondent effective November 24, 2000. On February 8, 2002, an "Order Denying Reinstatement Of License" was issued herein denying reinstatement of said 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 2, 2002, and Respondent has operated as a restricted licensee since that time.

On August 16, 2005, Respondent petitioned for reinstatement of said real estate salesperson license, and the

///

1 Attorney General of the State of California has been given notice
2 of the filing of said petition.

3 I have considered the petition of Respondent and the
4 evidence and arguments in support thereof. Respondent has
5 demonstrated to my satisfaction that Respondent meets the
6 requirements of law for the issuance to Respondent of an
7 unrestricted real estate salesperson license and that it would
8 not be against the public interest to issue said license to
9 Respondent.

10 NOW, THEREFORE, IT IS ORDERED that Respondent's
11 petition for reinstatement is granted and that a real estate
12 salesperson license be issued to Respondent if Respondent
13 satisfies the following conditions within nine (9) months from
14 the date of this Order:

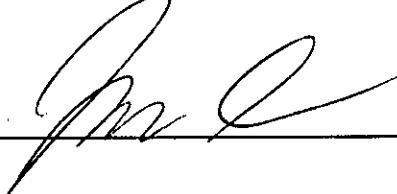
15 1. Submittal of a completed application and payment of
16 the fee for a real estate salesperson license.

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

22 This Order shall become effective immediately.

23 DATED: 2/24, 2006.

24 JEFF DAVI
25 Real Estate Commissioner

26 
27

FILED
MAR - 5 2002

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
LONG THANH LY,) NO. H-7791 SF
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On October 4, 2000, a Decision was rendered herein
revoking the real estate salesperson license of Respondent.

On November 29, 2001, Respondent petitioned for
reinstatement of said real estate salesperson license, and the
Attorney General of the State of California has been given notice
of the filing of said petition.

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

1 since the effective date of the Decision in this matter.
2 Consequently, Respondent is not able to present any evidence of
3 correction of practices that led to the disciplinary action in
4 this matter. Respondent, therefore, has not demonstrated
5 compliance with Section 2911(j), Title 10, California Code of
6 Regulations. In view of the criminal conviction suffered by
7 Respondent and his failure to disclose that conviction in his
8 real estate license application, additional time in a
9 supervised setting is required to establish that Respondent is
10 rehabilitated.

11 I am satisfied, however, that it will not be against
12 the public interest to issue a restricted real estate salesperson
13 license to Respondent.

14 NOW, THEREFORE, IT IS ORDERED that Respondent's
15 petition for reinstatement of his real estate salesperson license
16 is denied.

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

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

23 2. Submittal of evidence of having, since the most
24 recent issuance of an original or renewal real estate license,
25 taken and successfully completed the continuing education
26 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
27 for renewal of a real estate license.

1 The restricted license issued to Respondent shall be
2 subject to all of the provisions of Section 10156.7 of the
3 Business and Professions Code and to the following limitations,
4 conditions, and restrictions imposed under authority of Section
5 10156.6 of that Code.

6 A. The restricted license issued to Respondent may be suspended
7 prior to hearing by Order of the Real Estate Commissioner in
8 the event of Respondent's conviction or plea of nolo
9 contendere to a crime which is substantially related to
10 Respondent's fitness or capacity as a real estate licensee.

11 B. The restricted license issued to Respondent may be suspended
12 prior to hearing by Order of the Real Estate Commissioner on
13 evidence satisfactory to the Commissioner that Respondent
14 has violated provisions of the California Real Estate Law,
15 the Subdivided Lands Law, Regulations of the Real Estate
16 Commissioner or conditions attaching to the restricted
17 license.

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

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

26 (2) That the employing broker will exercise close
27 supervision over the performance by the restricted

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

D. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the limitations, conditions or restrictions of a restricted license until two (2) years have elapsed from the date of the issuance of the restricted license to respondent.

E. Prior to the delivery or mailing of Respondent's restricted license, Respondent shall 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 present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended. 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.

This Order shall be effective at 12 o'clock noon on

March 25, 2002.

DATED: February 8, 2002

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

By:

John R. Liberator
JOHN R. LIBERATOR
Chief Deputy Commissioner

FILED
NOV 22 2000

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
LONG THANH LY) NO. H-7791 SF
Respondent.) OAH No. N-2000040410

ORDER DENYING RECONSIDERATION

On October 19, 2000, a Decision was rendered in the above-entitled matter. The Decision is to become effective November 24, 2000.

On October 23, 2000, Respondent petitioned for reconsideration of the Decision of October 19, 2000.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of October 19, 2000, and reconsideration is hereby denied.

IT IS HEREBY ORDERED _____ November 22, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner
BY Robin T. Wilson, Chief Counsel

Robin T. Wilson

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 05 2000

DEPARTMENT OF REAL ESTATE

* * *

By Shelly Ely

In the Matter of the Accusation of)
LONG THANH LY,)
Respondent.)

NO. H-7791 SF
OAH NO. N 2000040410

DECISION

The Proposed Decision dated September 8, 2000, 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 a crime.

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 October 25, 2000.

IT IS SO ORDERED October 4, 2000.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

LONG THANH LY,

Respondent.

Case No. H-7791 SF

OAH No. N 2000040410

PROPOSED DECISION

On August 8, 2000, in Oakland, California, Alfred P. Knoll, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant Les Bettencourt, Deputy Real Estate Commissioner ("Commissioner"), Department of Real Estate ("Department") was represented by David B. Seals, Esq., counsel for the Department.

Respondent LONG THANH LY ("Respondent") appeared and was represented by J. Anne Rawlins, Esq., 428 J Street, #200, Sacramento, California 95814.

Evidence was received, the record closed and the matter submitted on August 8, 2000.

FACTUAL FINDINGS

1. LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, made the allegations in this matter in his official capacity, and not otherwise.

2. Respondent made application for a real estate salesperson license on March 17, 1999, pursuant to Part I of Division 4, and section 10153.4 of the California Business and Professions Code ("Code").

As a consequence of his application, respondent was issued a conditional salesperson license on April 13, 1999. Said license expires on October 13, 2000.

3. In the Salesperson License Application question number 25, an applicant is asked whether they have been convicted of a crime. To this question, respondent falsely and incorrectly checked the "No" box.

4. The evidence established that on October 16, 1998, in the Municipal Court of California, County of Santa Clara, respondent pled guilty to a misdemeanor violation of Penal Code section 484/488 (Petty Theft). This is a crime involving moral turpitude, and is substantially related to the functions, qualifications or duties of a real estate salesperson.

Respondent was placed on two years' court probation and ordered to pay fines totaling \$415. The fines have been paid. He remains on probation.

5. The police report about the incident that led to respondent's arrest and conviction indicated that he exited the premises of a Fry's Electronic Store without paying for a modem and greeting card that he had unwrapped and placed in a diaper bag. At the time of his arrest, the report narrates that respondent stated to store security personnel, "Hey, I'm sorry. I won't ever do that again." On cross-examination however, respondent maintained that someone at the store told him the items were free. The police report reflects no such contention at the time of his arrest. The value of the merchandise was approximately \$85.

6. Respondent admitted checking the "NO" box to question 25, testifying he thought the question required him to disclose only "major" crimes.¹ He felt his conviction was not a "major" crime, rather similar to a "traffic-like" offense not requiring disclosure. He based this conclusion on several facts. The first was that he had not been incarcerated, only cited at the time of his arrest. Second, when he appeared in court an attorney did not represent him. He entered a plea of guilty, as charged, at the urging of a court translator who told him to "...just say 'Yes' and pay the fine." Lastly, he did not receive a jail sentence and was only fined. From this respondent concluded that his arrest and conviction were "minor."

7. Matters of mitigation, extenuation and rehabilitation were considered. Respondent was born in Vietnam and immigrated to the United States in 1981. He is now a United States citizen. He is married and lives with his wife and five-year-old daughter in Milpitas. He has been employed by Landmark Realty for the last three years. This incident was his first contact with policing or disciplinary authorities.

¹ In question number 27, the applicant is asked for a detailed explanation of any convictions. In the space provided, an "Example" is given using as the example a misdemeanor conviction of Penal Code 484 (Petty Theft) with a probationary disposition.

8. Hao Nguyen, respondent's employing broker, submitted a declaration averring his long acquaintance with and vouching for respondent's integrity and honesty. He states that in his mind the theft incident was "... an isolated instance, which is totally out of character for respondent." He goes on to state his belief that the false answer to question 25 in respondent's license application was due to his "... mistaken belief that the expungement of his conviction also relieved him from the obligation to reveal this." Respondent denies telling Mr. Nguyen that his conviction had been expunged.

9. Sydney Meng testified that he has known respondent for over two years and has worked with him at Landmark Realty. He stated that in his opinion respondent is honest and helpful, and feels there would be no risk to the public safety should respondent be allowed to keep his license. He thinks he is a good family man, a good husband and father.

LEGAL CONCLUSIONS

1. Sections 490 and 10177, subsections (a) and (b) of the Code state, *inter alia*, that a real estate license may be refused, suspended or revoked where it has been found that an applicant has:

a) Procured, or attempted to procure, a real estate license or license renewal ... by fraud or misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, renewal, or reinstatement.

b) Entered a plea of guilty or nolo contendere to, or been found guilty, or been convicted of a felony or a crime involving moral turpitude ... irrespective of an order of the court granting probation following that conviction ... or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea and to enter a plea of not guilty, or dismissing the accusation or information.

2. By reason of respondent's guilty plea to a violation of Penal Code section 484/488, as set out in FACTUAL FINDINGS number 4, cause exists for the suspension or revocation of respondent's real estate salesperson license under sections 490 and 10177, subsection (b) of the Code.

3. By reason of respondent's false and misleading answer to question 25 in his application for a real estate license, as set out in FACTUAL FINDINGS numbers 3 and 4, cause exists for the suspension or revocation of respondent's real estate salesperson license under sections 490 and 10177, subsection (a) of the Code.

4. Matters in mitigation, extenuation and rehabilitation as set out in FACTUAL FINDINGS 5, 6, 7, 8 and 9, have been considered in making the following order. It is apparent from the record that respondent's petty theft conviction is his only contact with policing authorities, and that his past history is otherwise without blemish. Moreover, that he pled guilty without counsel to aid, explain and enumerate the consequences of such a plea, and that his plea was to some extent based on the recommendation of a court translator, ameliorates the implication of his conviction. As such, if respondent's conviction was the only negative incident regarding his license, a probationary license might be warranted. However, other aspects of respondent's case place him in a more negative light, such as the false and misleading answer in his real estate license application, and his less than credible testimony explaining why he did so. In addition he was not convincing about the fact that someone at the store told him he could take the secreted items without paying for them, which is flatly contradicted by the police report. Likewise troubling is why his employer Hao Nguyen references respondent's expungement in his declaration, when no expungement has been requested or granted. Consequently, the inference arises that respondent has not come to grips with the implication and seriousness of his conduct.

It is notable that under the Department's Criteria for Rehabilitation,² of the many categories considered by the Department to be significant indicia of rehabilitation,³ respondent provides positive evidence in only three applicable areas: the stability of his family life, the payment of his fines, and the testimony of friends and business associates.

Under these circumstances, it would not appear in the public interest to allow respondent's continued licensure. He is encouraged to reapply as the law allows. It would serve him well to obtain an expungement of his criminal convictions prior to any reapplication, and likewise be prepared to provide evidence of his broad-based community involvement and more extensive support backing any future application.

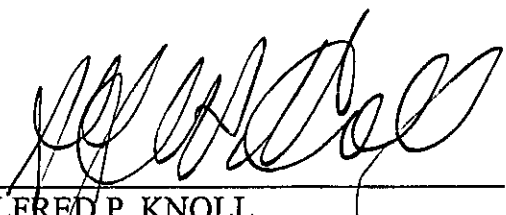
² California Code of Regulations, Title 10, Chapter 6, Article 18.5, Section 2912.

³ Passage of more than two years since the incident. Restitution (inapplicable here). Expungement. Completion of Probation. Abstinence from use of alcohol/drugs (inapplicable here). Payment of Fines. Correction of Business Practices (inapplicable here). New/Different social/professional relationships. Stability of Family Life. Enrollment/Completion of vocational classes. Significant involvement in the community, church or social programs. Credible testimony from applicant, family, friends, law enforcement, psychiatrists, therapists or social workers.

ORDER

All licenses and licensing rights of respondent LONG THANH LY under the Real Estate Law are revoked, without prejudice to future reapplication.

DATED: 9/8/00



ALFRED P. KNOLL
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
APR 13 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

LONG THANH LY,

Case No. H-7791 SF

OAH No.

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, 1515 Clay Street, Suite 206,
Oakland, CA 94612

on Wednesday, August 9, 2000, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation 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.

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: April 12, 2000

DEPARTMENT OF REAL ESTATE

By

DAVID B. SEALS

Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 DEPARTMENT OF REAL ESTATE
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 (916) 227-0788 (Direct)
7

FILED
FEB 17 2000

DEPARTMENT OF REAL ESTATE

By *Laurie A. Zier*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No.: H-7791 SF
12 LONG THANH LY,) ACCUSATION
13 Respondent.)
14

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against LONG THANH LY (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 Business and Professions Code (hereinafter "Code").

23 II

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

27 ///

1
2 III

3 On or about October 16, 1998, in the Municipal Court of
4 the State of California, County of Santa Clara, Respondent was
5 convicted of the crime of Petty Theft, in violation of Penal Code
6 Sections 484 and 488, a misdemeanor and a crime involving moral
7 turpitude which bears a substantial relationship under Section
8 2910, Title 10, California Code of Regulations (hereinafter
9 "Regulations"), to the qualifications, functions or duties of a
10 real estate licensee.

11 IV

12 On or about March 17, 1999, Respondent made application
13 to the Department of Real Estate of the State of California for a
14 real estate salesperson license with the knowledge and
15 understanding that any license issued as a result of said
16 application would be subject to the conditions of Section 10153.4
17 of the Code.

18 VI

19 In response to Question 25 of said application, to wit:
20 "Have you ever been convicted of any violation of law?",
21 Respondent answered "No".

22 V

23 On or about April 13, 1999, in reliance upon
24 Respondent's representations in said application, the Department
25 issued a real estate salesperson license to Respondent.

26 ///

27 ///

///

1
2 VI

3 Respondent's failure to reveal the conviction set forth
4 in Paragraph III, above, in said application constitutes the
5 procurement of a real estate license by fraud, misrepresentation,
6 or deceit, or by making a material misstatement of fact in said
7 application, and is cause under Section 10177(a) of the Code for
8 the suspension or revocation of all licenses and license rights
9 of Respondent under the Real Estate Law.

10 VII

11 Respondent's conviction described in Paragraph III,
12 above, constitutes cause under Sections 490 and 10177(b) of the
13 Code for the suspension or revocation of all licenses and license
14 rights of Respondent under the Real Estate Law.

15 WHEREFORE, Complainant prays that a hearing be
16 conducted on the allegations of this Accusation and that upon
17 proof thereof, a decision be rendered imposing disciplinary
18 action against all licenses and license rights of Respondent
19 under the Real Estate Law (Part 1 of Division 4 of the Business
20 and Professions Code), and for such other and further relief as
21 may be proper under other provisions of law.

22 

23 LES R. BETTENCOURT
24 Deputy Real Estate Commissioner

25 Dated at Oakland, California,
26 this 27th day of January, 2000.