

FLAG

FILED

OCT - 5 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of
ELAINE KRISTAL LUONG,
Respondent.

No. H-7862 SF

ORDER GRANTING UNRESTRICTED LICENSE

On February 14, 2001, a Decision was rendered herein denying the 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 April 6, 2001, and Respondent has operated as a restricted licensee since that time.

On March 11, 2009, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

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

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

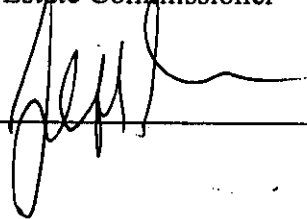
4 (a) Submit a completed application and pay the appropriate fee for a real
5 estate salesperson license, and

6 (b) Submit evidence of having, since the most recent issuance of an original or
7 renewal real estate license, taken and successfully completed the continuing education
8 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate
9 license.

10 This Order shall become effective immediately.

11 IT IS SO ORDERED 9-29-09

12 JEFF DAVI
13 Real Estate Commissioner

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FILED

FEB 28 2001

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Application of)
ELAINE KRISTAL LUONG,)
Respondent.)

NO. H-7862 SF
OAH NO. N-2000090154

DECISION

The Proposed Decision dated February 5, 2001, 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.

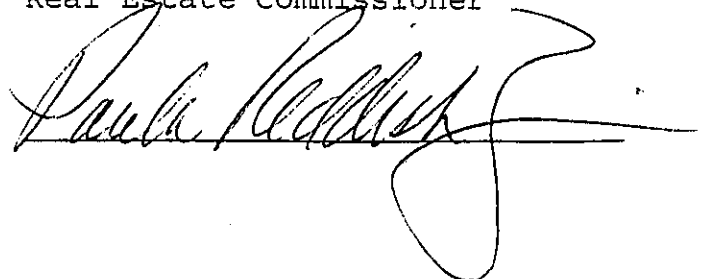
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy 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 21, 2001.

IT IS SO ORDERED February 14, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

ELAINE KRISTAL LUONG,

Respondent.

No. H-7862 SF

OAH No. N 2000090154

PROPOSED DECISION

On January 10, 2001, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David A. Peters, Counsel, represented complainant.

Paul Tunley, Attorney at Law, with the assistance of Dennis Roberts, Attorney at Law, both with an address of 370 Grand Avenue, Oakland, California 94610-4892, represented respondent Elaine Kristal Luong, who was present at all times during the hearing.

On January 10, 2001, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt ("Complainant"), in his official capacity as a Deputy Real Estate Commissioner of the State of California, made the first amended statement of issues against respondent.

2. On June 6, 2000, respondent made application to the Department of Real Estate for a real estate salesperson license. She made the application with the knowledge and understanding that any license issued as a result of the application would be subject to the conditions of Business and Professions Code section 10153.4.

On June 16, 2000, the Department received the application signed by respondent.

3. On August 12, 1996, the California Municipal Court in and for Alameda County, Alameda Judicial District convicted respondent, on her plea of no contest, of violating Penal Code section 476 [Intent to Defraud by Passing a Counterfeit Bank Note or Check], a felony.

The crime for which respondent was convicted involves moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee.

4. The facts and circumstances of the events that led to her conviction pertain to respondent's participation [under her maiden name of "Nguyen"], along with one Kimaly Kui Luong in an unlawful scheme, on or about August 1, 1996, when she presented a worthless and counterfeit cashier's check at Wells Fargo Bank in the City of Alameda, Alameda County, California.

5. As a result of the felony conviction, the Superior Court for Alameda County on September 10, 1996, issued an order that placed respondent to three (3) years of formal probation under the supervision of the county probation office. The court imposed a jail term of 62 days; however, she was released from jail custody due to the time she spent in jail from the date of her conviction to the date of sentencing, plus credit for good time. The court ordered respondent to pay a fine of \$200 to the state restitution fund and \$100 fee to the county probation investigation fund.

Matters in Extenuation

6. Respondent persuasively asserts that in 1996 she fell victim to the influence of a young man – named Eric, whom she had a possible romantic interest, who asked her to cash a bank cashier's checks at her bank where she had accounts.

Matters in Mitigation

7. When she committed the criminal misconduct in August 1996, respondent was 21 years of age.

8. Complainant provides no evidence of past criminal convictions of respondent other than the matter set forth in Finding 3, above. Respondent insists that she has never been convicted of any other crime in her life.

Matters in Rehabilitation

9. On December 2, 1999, the Alameda County Probation Office issued a letter that acknowledged that respondent has fulfilled the three-year term of her criminal sentence.

10. Respondent accepts responsibility for her past criminal misconduct, notwithstanding her account that a young man- named Eric - fooled her into passing a counterfeit check.

11. On January 7, 2000, the California Superior Court in and for Alameda County issued an order that granted respondent's petition to Dismiss and Release from Penalties under Penal Code section 1203.4. The court's order declared that "the conviction is set aside and accusatory pleadings dismissed; [respondent] is released from all penalties and disabilities resulting from offenses which [respondent] was convicted...."

12. Respondent owns a recycling business in the San Francisco Bay region.

13. At the time of her arrest of the crime of attempting to pass a counterfeit cashier's check, respondent was a single woman. She married her husband - Kenny Luong- in about 1998. Respondent has a baby daughter.

Respondent, her husband and infant live in Oakland.

Respondent's relationship with her family, that includes her husband and infant, demonstrates that she possesses the ingredients for long-term personal stability.

14. Respondent has taken basic real estate classes. She studied at Anthony Real Estate School at the time that she provided parental care to her infant daughter.

15. At the hearing of this matter respondent calls one witness to support accounts of her progress towards full rehabilitation.

John Forrest Bell, associate manager for Mason McDuffie, (Prudential), in Oakland, California, appears at the hearing in support of respondent. He is a real estate licensee and he acts as the assistant to the broker in charge of the subject Mason McDuffie office.

Included in his duties, Mr. Bell reviews contracts for all licensed sales agents in his office. Mr. Bell espouses that the Mason McDuffie office has a renowned training program for newly hired sales agents. The office's basic training course consists of two weeks of lectures on the nuts and bolts of being a good sales representative. All agents must secure membership in the Oakland Association of Realtors and other professional organizations for real estate licensees.

Mr. Bell conveys knowledge that Amberson McCulloch, manager and vice president of Prudential Ca Realty of Oakland, California, has a keen interest in hiring respondent as a sales agent.

16. Respondent devotes time and money to a charitable organization called the "Villagers of Phu Quy" that provides assistance to the residents of a small island community in the southern portion of Vietnam.

17. Respondent hopes to aid her husband's real estate development business.

18. In her application for licensure, respondent disclosed the fact of her past conviction. Respondent is candid in disclosing her criminal conviction history.

CONCLUSIONS OF LAW

1. Cause for disciplinary action against the license issued to respondent exists under Business and Professions Code sections 480(a) and 10177(b), by reason of the matter set forth in Finding 3.

2. The matters in extenuation, mitigation, rehabilitation and aggravation as set forth in Findings 6 through 18 have been considered in making the following order.

Respondent has successfully attained a majority of the criteria for rehabilitation as set out in Title 10, California Code of Regulations section 2911.

3. With the passage of three years ten months between the date of her conviction and the date of her application for licensure, coupled with there not being any other instance of respondent engaging in criminal activities or other questionable behavior as well as her acts to rehabilitate herself, it would not be against the public interest to allow respondent to hold a restricted real estate salesperson's license.

ORDER

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

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime that is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

Respondent Elaine Kristal Luong shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until four (4) years have elapsed from the date of issuance of the restricted license to respondent.

3. With the application for license, or with the application for transfer to a new employing broker, respondent Elaine Kristal Luong shall submit a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate that shall certify as follows:

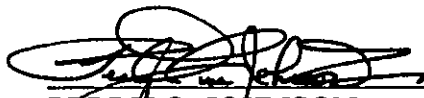
(a) That the employing broker has read the Decision that is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent Elaine Kristal Luong's restricted real estate salesperson's license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting the suspension.

5. Pursuant to Business and Professions Code section 10154, if respondent Elaine Kristal Luong has not satisfied the requirements for an unqualified license under Code section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license that is subject to Code section 10153.4 until four years after the date of the issuance of the proceeding restricted license.

DATED: February 05th, 2001



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

FILED
NOV 20 2000

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

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

ELAINE KRISTAL LUONG,

Case No. H-7862 SF

OAH No. N-2000090154

Respondent

SECOND AMENDED
NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 1515 Clay Street, Suite 206,
Oakland, CA 94612

on Wednesday, January 10, 2001, at the hour of 3:00 PM,
or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place
of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within
ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days
will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You
are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent
yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the
Department may take disciplinary action against you based upon any express admission or other evidence including
affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are
not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses
testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the
production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who
does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs.
The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: November 20, 2000

By

David A. Peters

DAVID A. PETERS

Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT - 6 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

ELAINE KRISTAL LUONG,

Case No. H-7862 SF

OAH No. N-2000090154

Respondent

FIRST AMENDED
NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 1515 Clay Street, Suite 206,
Oakland, CA 94612

on Wednesday, November 15, 2000, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place
of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within
ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days
will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You
are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent
yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the
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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 for his or her costs.
The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: October 6, 2000

By

JAMES L. BEAVER

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)

FILED
SEP 29 2000

DEPARTMENT OF REAL ESTATE

By *Lucie A. Zain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No.: H-7862 SF
12 ELAINE KRISTAL LUONG,)
13 Respondent.)
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FIRST AMENDED
STATEMENT OF ISSUES

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against ELAINE KRISTAL LUONG (hereinafter "Respondent")
18 alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about June 16, 2000 with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section 10153.4
25 of the California Business and Professions Code.

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2 II

3 Complainant, Les R. Bettencourt, a Deputy Real Estate
4 Commissioner of the State of California, makes this Statement of
5 Issues in his official capacity.

6 III

7 On or about August 12, 1996, in the Superior Court of
8 the State of California, County of Alameda, Respondent was
9 convicted of violation of California Penal Code Section 476
10 (Making, Passing or Possessing Fictitious Bill, Note or Check), a
11 felony and a crime involving moral turpitude which bears a
12 substantial relationship under Section 2910, Title 10, California
13 Code of Regulations (herein "the Regulations"), to the
14 qualifications, functions or duties of a real estate licensee.

15 IV

16 The crime of which Respondent was convicted, as alleged
17 in Paragraph III, above, constitutes cause for denial of
18 Respondent's application for a real estate license under Sections
19 480(a) and 10177(b) of the California Business and Professions
20 Code.

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

8 
9 LES R. BETTENCOURT
10 Deputy Real Estate Commissioner

11 Dated at Oakland, California,
12 this 28th day of September, 2000.
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**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

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DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

ELAINE KRISTAL LUONG

By Shelly Ely

Case No. H-7862 SF

OAH No.

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on WEDNESDAY--OCTOBER 11, 2000, at the hour of 11:00 AM, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearing within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: SEPTEMBER 8, 2000

DEPARTMENT OF REAL ESTATE

By

JAMES L. BEAVER,

Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
AUG 23 2000

DEPARTMENT OF REAL ESTATE

By Jean Almond

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 ELAINE KRISTAL LUONG,)
13 Respondent.)

NO. H-7862 SF

STATEMENT OF ISSUES

14
15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against ELAINE KRISTAL LUONG (hereinafter "Respondent")
18 alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about June 16, 2000 with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section 10153.4
25 of the California Business and Professions Code.

26 II

27 Complainant, Les R. Bettencourt, a Deputy Real Estate

1 Commissioner of the State of California, makes this Statement of
2 Issues in his official capacity.

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5 California, County of Alameda, Respondent was convicted of
6 violation of California Vehicle Code Section 476 (Making, Passing
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10 Regulations (herein "the Regulations"), to the qualifications,
11 functions or duties of a real estate licensee.

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13 The crime of which Respondent was convicted, as alleged
14 in Paragraph III, above, constitutes cause for denial of
15 Respondent's application for a real estate license under Sections
16 480(a) and 10177(b) of the California Business and Professions
17 Code.

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

24 
25 LES R. BETTENCOURT
Deputy Real Estate Commissioner

26 Dated at Oakland, California,
27 this 14 day of August, 2000.