

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
JUN 22 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of)
)
 TONY QUOC DO,)
)
 Respondent.)

NO. H-7916 SF

OAH NO. N-2001020413

DECISION

The Proposed Decision dated May 28, 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 July 12, 2001.

IT IS SO ORDERED

June 20, 2001, 2001.
PAULA REDDISH ZINNEBANN
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

TONY QUOC DO,

Respondent.

Case No. H-7916 SF

OAH No. N 2001020413

AMENDED PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on April 11, 2001, in Oakland, California.

James L. Beaver, Counsel, represented the complainant Les R. Bettencourt, Deputy Real Estate Commissioner of the State of California.

Respondent Tony Quoc Do appeared on his own behalf.

The matter was submitted on April 11, 2001. A proposed decision issued on May 11, 2001. This amended proposed decision is being issued to correct a mistake (failure to address an allegation in the Statement of Issues) in the original proposed decision.

FACTUAL FINDINGS

1. Official notice is taken that complainant Les R. Bettencourt made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. On October 2, 2000, the Department of Real Estate (Department) received an application for a real estate salesperson license from Tony Quoc Do (respondent). The application was dated September 25, 2000, and signed under penalty of perjury. On the application respondent answered "No" in response to question number 25 "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? (YOU MAY OMIT CONVICTIONS FOR DRUNK DRIVING, RECKLESS DRIVING, AND MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE." Respondent's answer to question number 25 was false or

misleading in that he failed to disclose that he had been convicted of the offense set forth in Finding 3.

3. On June 16, 1995, in the Municipal Court of the State of California for the County of Santa Clara, respondent was convicted, upon a plea of guilty, of violation of Penal Code section 148.9 (giving a false identification to a police officer), a misdemeanor and a crime involving moral turpitude which is substantially related to the qualifications, functions or duties of a real estate salesperson.

Imposition of sentence was suspended and respondent was placed on one year court probation on terms and conditions that included payment of a \$100 restitution fine and a ten day jail sentence. Respondent was permitted to complete his jail sentence (after receiving three days' credit for time served) through a community work program. Respondent's probation was revoked and reinstated at least twice for failure to timely complete the court ordered work program. Respondent states he failed to timely complete the work program because he moved to Texas to accept a position as an aircraft mechanic. Respondent represents he has now successfully completed probation.

4. The facts and circumstances of the conviction are that on April 18, 1995, respondent was stopped by San Jose Police while driving a vehicle owned by a friend. Respondent was asked to exit the vehicle after he indicated to police that he did not have any identification. During a subsequent pat search, respondent volunteered that he was wearing his brother's pants and identified himself as Kien Trung Do. The pat search revealed an old driver's license bearing the name Tony Do in respondent's pocket. A subsequent search of the vehicle uncovered a black men's wallet with a current picture of respondent with the name Tony Do next to it, as well as several of respondent's credit cards. When police ran the name Tony Do, it came back with a suspended driver's license and an outstanding warrant for the arrest of Tony Do. After he was taken into custody respondent admitted to police that he was Tony Do.

5. Respondent does not contest his criminal conviction. He explains that he did not tell police his true identity because he was driving on a suspended license, he was young and scared, and he did not want to get caught. Even though he was only 21 years old at the time, respondent already had numerous traffic violations on his record and his license had been suspended two or three times. Respondent acknowledges that his explanation does not justify his actions and that his decision to give police a false identity was a poor one. He accepts full responsibility for his actions. However, he insists that he has now changed and that he will not jeopardize his future by repeating his past youthful mistakes. He is now very focused on his work, he attends temple and he volunteers at the "Love Program," which helps serve the needy and delivers food to the elderly in the Fremont-Newark area. He has also seen a counselor to process the causes of his past youthful infractions and has submitted an application to expunge his criminal conviction.

With respect to his failure to list his criminal conviction on his application for a real estate license, respondent credibly denies any intent to deceive the Department. He explains that when he was younger he appeared in court on numerous traffic violations. His criminal conviction was part of one of those traffic violations. (At the time of his criminal conviction respondent also pled guilty to violation of Vehicle Code sections 14601, subdivision (a) and 14601.1 [driving on a suspended license].) Respondent states that because his conviction for providing false identification to a police officer occurred incident to a traffic violation, he always thought of it as part of a traffic violation. He had forgotten that it was a separate criminal conviction until the Department contacted him regarding his failure to list the criminal conviction on his application.

6. Respondent is 27 years old. He is single with no dependents, but has been involved in a stable romantic relationship for approximately six years. Respondent lives with his girlfriend, a manicurist, and her children. Respondent currently works as a printer/computer technician at M.A.C., a computer store in Berkeley, California. He has held that position since 1998. Prior to obtaining his current position respondent worked as an aircraft mechanic. He is licensed as an aircraft mechanic by the FAA. Respondent is seeking a real estate license because he "loves and enjoys" real estate and feels he could do very well in that field. Respondent already has an offer of employment from Five Stars Realty in Fremont, California, if he is granted a real estate license.

7. Respondent submitted letters from his counselor Gene Grossman, MFT, his employer and personal friend Danny Pusawong, and the brokers at Five Stars Realty, attesting to their belief that respondent is an ethical and responsible individual notwithstanding his past youthful infractions. Respondent also submitted letters from his manager Albert Ho and his instructor at Sierra Academy of Aeronautics Roger Brooks, attesting to respondent's current maturity and strong work ethic. Respondent's mother and his girlfriend Cindy Hong testified that respondent has changed and matured into a kindhearted, loving, responsible person who works very hard to improve his own life and the lives of those he loves.

8. Respondent failed to offer any evidence that he has successfully completed all of the courses required under Business and Professions Code section 10153.4.

LEGAL CONCLUSIONS

1. Cause for denial of respondent's application exists pursuant to Business and Professions Code sections 480, subdivision (a) and 10177, subdivision (b) in that respondent has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions or duties of a real estate salesperson, as set forth in Finding 3.

2. It was not established that cause for denial of respondent's application exists pursuant to Business and Professions Code sections 480, subdivision (c) and 10177,

subdivision (a) [attempting to procure a license by fraud, misrepresentation, deceit or material misstatement in the application]. Respondent clearly made a mistake when he marked "No" in response to the question "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? . . ." However, he credibly testified that because the conviction occurred incident to one of many traffic violations he forgot it was charged as a criminal offense. It is therefore found that respondent was not attempting to procure a real estate license by fraud, misrepresentation, deceit or material misstatement when he failed to disclose his criminal conviction on his application.

3. Notwithstanding respondent's prior conviction, it is determined that it would not be against the public interest to grant respondent a real estate salesperson license upon appropriate terms and conditions. In this regard it is noted that respondent's conviction occurred nearly six years ago incident to a traffic violation and respondent has not engaged in any known criminal conduct since that time. Respondent also appears to have accepted responsibility for his action and seems motivated to improve his own life and the lives of those he loves. It thus appears unlikely that respondent will engage in criminal conduct in the future.

ORDER

The application of respondent Tony Quoc Do 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 shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of said Code:

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 which 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.
2. Respondent 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 one year has 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 shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:
 - (a) That the employing broker has read the Decision which 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's restricted real estate salesperson license is issued subject to the requirements of section 10153.4 of the Business and Professions Code, 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 of the suspension.
5. Pursuant to section 10154, if respondent has not satisfied the requirements for an unqualified license under section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: 5/28/01


CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

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

FILED
FEB 20 2001
DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

TONY QUOC DO,

Case No. H-7916 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, CA 94612 on WEDNESDAY, APRIL 11, 2001, at the hour of 3:00 P.M., 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: February 20, 2001

DEPARTMENT OF REAL ESTATE

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
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FILED
FEB - 5 2001

DEPARTMENT OF REAL ESTATE

By *Laurel A. Z...*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No.: H-7916 SF
12 TONY QUOC DO,) STATEMENT OF ISSUES
13 Respondent.)
14

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

19 I

20 Complainant, Les R. Bettencourt, a Deputy Real Estate
21 Commissioner of the State of California, makes this Statement of
22 Issues in his official capacity.

23 II

24 Respondent, pursuant to the provisions of Section
25 10153.3 of the Business and Professions Code, made application to
26 the Department of real Estate of the State of California for a
27 real estate salesperson license (hereinafter "the application")

1 on or about October 2, 2000 with the knowledge and understanding
2 that any license issued as a result of said application would be
3 subject to the conditions of Section 10153.4 of the California
4 Business and Professions Code.

5
6 III

7 On or about June 16, 1995, in the Municipal Court of
8 California, Santa Clara County Judicial District, Respondent was
9 convicted of the crime of GIVING FALSE NAME TO PEACE OFFICER in
10 violation of Penal Code Section 148.9, a misdemeanor and a crime
11 involving moral turpitude which bears a substantial relationship
12 under Section 2910, Title 10, California Code of Regulations
13 (herein "the Regulations"), to the qualifications, functions or
14 duties of a real estate licensee.

15 IV

16 In response to Questions 25 and 27 of the application,
17 requiring Respondent to reveal the court of conviction, arresting
18 agency, date of conviction, type of conviction, code name and
19 section number violated, disposition and case number, for each
20 conviction of any violation of law (other than convictions for
21 drunk driving, reckless driving, and minor traffic citations
22 which do not constitute a misdemeanor or felony offense),
23 Respondent concealed and failed to reveal the conviction set
24 forth in Paragraph III, above.

25 V

26 Respondent's failure to reveal the conviction described
27 in Paragraph III, above, in the application constitutes the
attempt to procure a real estate license by fraud,

1 misrepresentation, or deceit, or by making a material
2 misstatement of fact in the application, which failure is cause
3 for denial of Respondent's application for a real estate license
4 under Sections 480(c) and 10177(a) of the California Business and
5 Professions Code.

6
7 VI

8 Respondent's criminal conviction, as alleged in
9 Paragraph III, above, constitutes cause for denial of
10 Respondent's application for a real estate license under Sections
11 480(a) and 10177(b) of the California Business and Professions
12 Code.

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

19 
20 LES R. BETTENCOURT
21 Deputy Real Estate Commissioner

22 Dated at Oakland, California,
23 this 24th day of January, 2001.
24
25
26
27