

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC 17 2002

DEPARTMENT OF REAL ESTATE

* * *

By Shelly Ely

In the Matter of the Application of)
NANCY HANH DANG,)
Respondent.)

NO. H-8147 SF
OAH No. N2002080651

DECISION

The Proposed Decision dated November 14, 2002, 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. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon
on January 6, 2003.

IT IS SO ORDERED December 5 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

NANCY HANH DANG,

Respondent.

No. H-8147 SF

OAH No. N 2002080651

PROPOSED DECISION

On October 22, 2002 in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David B. Seals, Counsel, represented Complainant.

Brent C. Jorgenson, Attorney at Law, 913 Willow Street, Suite 203, San Jose, California 95125, represented Nancy Hanh Dang ("respondent"), who appeared for all phases of the hearing.

The record was held open for the purpose of extending time to Complainant's counsel to file with OAH a memorandum regarding the status of respondent's progress towards completing courses of study required for licensure. On or about October 29, 2002, complainant's attorney telephoned OAH to express that no basis exists for filing a memorandum to show respondent had completed the course of study.

On October 29, 2002, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. On July 17, 2002, Complainant Les R. Bettencourt ("Complainant"), in his official capacity as Deputy Real Estate Commissioner of the State of California, made the statement of issues against respondent.

2. On March 27, 2002, the Department of Real Estate received respondent's application for a real estate salesperson license.

The application remains pending as the Department has refused to issue a license to respondent due to her past acts and omissions that appear to disqualify her for licensure.

Record of Criminal Convictions

3. On March 1, 1994, in case number C9809068, the California Municipal Court for the County of Santa Clara, convicted respondent, on her plea of guilty, of violating Penal Code sections 484/488 (Petty Theft), a misdemeanor.

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 the 1994 conviction involve respondent's act of theft on January 10, 1994, from Mervyn's Department Store.

On that date, respondent unlawfully took two bras from a store shelf and placed the merchandise into a bag, which she carried. Respondent went to a cashier and attempted to "return" the garments for purposes of gaining a credit on an account with the store. Store detectives, who had surveilled respondent's shoplifting, stopped respondent from profiting from her unlawful conduct.

5. As a result of the conviction, the court suspended sentencing of respondent during a one-year period of probation. The court required respondent to pay about \$155 in fines and fees.

False and Misleading Data in Application for Licensure

6. On March 20, 2002, respondent signed an application for licensure as a real estate salesperson. She signed the application under penalty of perjury that all answers and statements given by her were true and correct.

7. The application for licensure includes item 25 that reads: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? (YOU MAY OMIT CONVICTIONS FOR DRUNK DRIVING, RECKLESS DRIVING, AND MINOR TRAFFIC CITATIONS [THAT] DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE.). Under the application's item 27, the Department asked respondent to "COMPLETE ONE LINE FOR EACH VIOLATION AND PROVIDE [AN] EXPLANATION BELOW... INDICATE WHETHER EACH CONVICTION WAS A MISDEMEANOR OR FELONY AT THE TIME THE CONVICTION OCCURRED...."

8. In response to item number 25 on the application for licensure as a real estate salesperson, respondent answered "no." By her response, respondent failed to

fully disclose the record of criminal convictions as detailed herein in Factual Finding 3. Under item 27 on the application, respondent provided no information regarding the record of the conviction against her in March 1994.

By respondent's failure to provide the Department with the true record of her convictions, she presented the Department with incorrect and false or misleading information regarding her history of a criminal conviction.

9. Respondent's failure to disclose the conviction she received in 1994 indicates that respondent attempted to procure a real estate license by fraud, misrepresentation, or deceit, or that she made a material misstatement of fact in the application.

Matters in Rehabilitation

10. Respondent's conviction in 1994 occurred 9 years before she completed the application for licensure.

11. Respondent expresses remorse for her past criminal misconduct. She articulates that the act of petty theft involved a grave mistake on her part.

Matters in Aggravation

12. Respondent's representation is not credible, at the hearing of this matter, that she failed to disclose the fact of his 1994 conviction for theft because she simply did not remember the conviction.

Matters that Negatively Impact Upon Respondent's Progress towards Rehabilitation

13. Respondent offers no proof that she has filed a petition under Penal Code section 1203.4 with the courts that entered the convictions against her. Hence, she has no court order that expunges the record of conviction.

14. Respondent does not show that she had pursued any educational endeavor since the date of the conviction in 1994.

15. Respondent offers no proof that she has personal stability by way of support from a nucleus, or extended, family structure.

16. Respondent provides no competent evidence that she has made any significant or conscientious involvement in a community, church or privately-sponsored program designed to provide social benefits or to ameliorate social problems or ills.

17. Respondent calls no witness to the hearing of this matter.

No one appears on respondent's behalf to offer evidence pertaining to respondent's reputation in her community for honesty and integrity.

No person comes to the hearing to describe respondent's attitude towards her past criminal action that led to the conviction in March 1994.

No individual appears at the hearing to express an understanding of respondent's false and misleading responses to the Department's application for licensure.

18. Respondent presents no competent evidence that she has told her proposed employing real estate broker about her past criminal conviction. No proof exists that respondent's current employer knows of the Department's rationale for its denial of respondent's application for licensure.

CONCLUSIONS OF LAW

1. Business and Professions Code section 480, subdivision (a) provides that the Department may deny a license on the ground that the applicant has "been convicted of a crime... (that)... is substantially related to the qualifications, functions or duties of the business ... for which (an) application is made."

Business and Professions Code section 10177, subdivision (b) establishes that the Department may deny the issuance of a license to an applicant who has "been convicted of ... a crime involving moral turpitude."

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 matters set forth in Factual Finding 3.

2. Business and Professions Code section 480, subdivision (c) provides that the Department may discipline a license on "the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation or a material fact or by knowingly omitting to state a material fact."

Business and Professions Code section 10177, subdivision (a) establishes that the Department may deny the issuance of a license to an applicant who has "procured, or attempted to procure, a real estate license ... by fraud, misrepresentation or deceit, or by making any material misstatement of fact in an application for a real estate license...."

Cause for disciplinary action against the license issued to respondent exists under Business and Professions Code sections 480, subdivision (c) and 10177(a), by reason of the matters set forth in Factual Findings 8 and 9.

3. The matters in rehabilitation, aggravation, and as well as matters that negatively reflect upon respondent's progress towards full rehabilitation as set forth in Findings 10 through 18 have been considered in making the following order.

4. As set out in California Code of Regulations, title 10, section 2912, respondent has not successfully attained a majority of the criteria for rehabilitation from the criminal conviction. Yet, she appears to be on the path towards full rehabilitation. However, her dishonesty in completing the Department's application for licensure raises a doubt as to respondent's commitment to honesty and truthfulness in attending to important government documents.

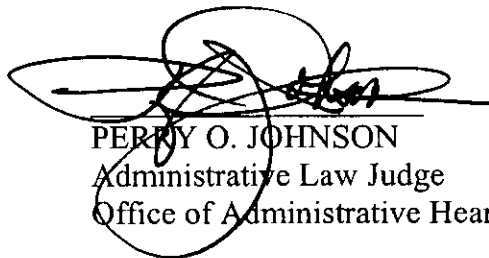
5. Most troublesome in this matter is respondent's explanation for her failure to disclose on the license application the fact of her 1994 conviction for theft. Respondent's assertion is not credible when she completed the application for licensure that she simply did not remember the conviction.

The failure to provide true and accurate information of the Department's application for licensure, coupled with her criminal history of a theft conviction, indicate that it would be against the public interest to allow respondent to hold a real estate salesperson's license, even on a restricted basis.

ORDER

The application for a real estate salesperson license by respondent Nancy Hahn Dang is denied.

DATED: November 14, 2002


PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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

FILED
AUG 21 2002

DEPARTMENT OF REAL ESTATE

By Kathleen Centura

In the Matter of the Application of

NANCY HANH DANG,

} Case No. H-8147 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, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **OCTOBER 22, 2002**, 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 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 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 his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: AUGUST 21, 2002

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS, Counsel

1 LARRY A. ALAMAO, Counsel
State Bar No. 47379
2 Department of Real Estate
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
JUL 26 2002

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13 NANCY HANH DANG,) NO. H-8147 SF
14 Respondent.) STATEMENT OF ISSUES
15)

16 The Complainant, LES R. BETTENCOURT, a Deputy Real
17 Estate Commissioner of the State of California, for Statement of
18 Issues against NANCY HANH DANG (hereinafter "Respondent"), is
19 informed and alleges as follows:

20 I

21 Respondent made application to the Department of Real
22 Estate of the State of California for a real estate salesperson
23 license on or about March 27, 2002, with the knowledge and
24 understanding that any license issued as a result of said
25 application would be subject to the conditions of Section 10153.4
26 of the Business and Professions Code.

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II

Complainant, LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

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

IV

On or about March 1, 1994, in the Municipal Court, County of Santa Clara, Respondent was convicted of a violation of Section 484/488 of the California Penal Code (Theft), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

V


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

VI

Respondent's failure to reveal the conviction set forth in Paragraph IV above in said application constitutes the procurement of a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which failure is cause for denial of Respondent's

1 application for a real estate license under Sections 480(c) and
2 10177(a) of the California Business and Professions Code.

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

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12 
13 LES R. BETTENCOURT
14 Deputy Real Estate Commissioner
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16 Dated at Oakland, California,
17 this 17th day of July, 2002.
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