

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

CINDY M. NGUYEN,

Respondent.

Case No. H-8394 SF

OAH No. N2003050660

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California on August 6, 2003.

Complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California, was represented by Deidre L. Johnson, Counsel.

Respondent Cindy M. Nguyen represented herself.

The matter was submitted on August 6, 2003.

FACTUAL FINDINGS

1. On June 10, 2002, Cindy M. Nguyen (respondent) submitted to the Department of Real Estate (Department) an application for a real estate salesperson license. Any license issued pursuant to that application would be subject to the provisions of Business and Professions Code section 10153.4.

2. In response to item number 25 on her application ("Have you ever been convicted of any violation of law?"), respondent checked "yes." In item number 27, which asks for a detailed explanation of convictions, respondent reported that she had been convicted of a misdemeanor in "Palo Alto County" in 1991. She did not specify the Penal Code section of which she had been convicted.

3. On August 9, 2002, the Department informed respondent by form letter that her application did not provide sufficient details for a decision to be made regarding her license eligibility. Respondent was asked to answer three questions, one of which was, "Have you ever been convicted of any violation of law?" To this question, respondent checked "no." She returned the form to the Department on August 14, 2002.

4. Respondent's answer to this question was incorrect. She had, in fact, been convicted of a violation of law. On January 5, 1998, in the Municipal Court of California, County of Santa Clara, Palo Alto Facility, respondent had been convicted, on her plea of

guilty, of a misdemeanor violation of Penal Code sections 484/488 (petty theft), a crime that involves moral turpitude and that is substantially related to the qualifications, functions and duties of a real estate licensee. Upon conviction, imposition of sentence was suspended and respondent was placed on probation for two years. She was required to pay fines and fees of about \$200 and to take a level-one theft class.

5. Respondent successfully complied with the terms of her probation. On November 28, 2000, her petition for relief under Penal Code section 1203.4 was granted, her guilty plea was set aside, the finding of guilt was vacated and the complaint was dismissed.

6. The circumstances that resulted in respondent's conviction occurred on November 15, 1997. Respondent was shopping in the Bloomingdale's store in Palo Alto. She tried on a pair of pants that did not have a price tag. She found a \$16.99 price tag in the dressing room and put that in the pocket of the pants she wanted to buy. Respondent knew the true cost of the pants was \$180. Respondent purchased the pants for \$16.99, after which she was stopped by store security and arrested for shoplifting.

7. Although she says it is no excuse for her conduct, respondent maintains that at the time of her crime she had just ended a seven-year relationship and was somewhat depressed over this. Nevertheless, she knows that she made a mistake and vows it will not happen again. She regrets her crime and feels disgraced and embarrassed by it. In the theft class she was required to take as part of probation, respondent learned how to deal with stress without resorting to crime. She understands that crime does not pay.

8. Respondent testified that her reporting on her application of a conviction date of 1991, rather than 1998 was simply due to an error. She did not list the Penal Code section of which she was convicted because she did not remember it. Regarding her answer to the follow-up letter sent by the Department, respondent maintains she answered "no" because she "assumed" the crime had been dismissed and that she therefore did not have to report it. She concedes, however, that she did read the "fine print" in the letter, which states that "Convictions expunged under Penal Code section 1203.4 must be disclosed." Respondent did not explain why she "assumed" the conviction had been dismissed when she responded to the August 2002 letter but had not made the same assumption when she had completed the application two months earlier.

9. Respondent is 32 years old. She has a degree in hospitality management from San Jose State University. She has recently taken a job as a loan processor for Washington Mutual. When she completed her application for that job she reported her conviction. Respondent has worked in real estate-related fields for about a year and a half. She has served as a sales representative for a title company, a sales representative for a mortgage lender, and a loan processor for a mortgage company. Before that, respondent had worked as a tech recruiter for about six years, until losing her job in the dot com crash. If she is granted a real estate license, respondent would like to initially work in residential sales, which would hopefully lead to commercial sales.

10. Respondent's community service includes participation in the Vietnamese American Professionals' Alliance, which raises funds to send Vietnamese children to school, and Aid to Children Without Parents, another fundraising group.

LEGAL CONCLUSIONS

1. Cause for denial of respondent's application exists pursuant to Business and Professions Code sections 480(a) and 10177(b) in that she was convicted of a crime involving moral turpitude and that bears a substantial relationship to the qualifications, functions and duties of a real estate licensee.

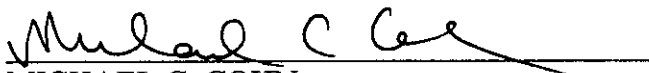
2. Cause for denial of respondent's application also exists pursuant to Business and Professions Code sections 480(c) and 10177(a) in that, by denying in response to the Department's request for further information that she had been convicted of a crime, she knowingly made a material misstatement of fact on her application. (The Department's follow-up letter must be considered an integral part of respondent's application.)

3. When she initially completed her application, respondent did report that she had been convicted of a crime, but she had the conviction date wrong by seven years, and she did not specify the code section of which she had been convicted. Respondent could easily have determined the correct date of her conviction and the section violated (as well as the correct county name) had she taken the time to contact the court for verification. Although respondent admitted she read the "fine print" in the follow-up letter, advising her she was required to disclose convictions that had been expunged under Penal Code section 1203.4, she nevertheless answered "no" to the question about convictions because she "assumed" the conviction had been dismissed. While it does not appear respondent was dishonestly denying her conviction, the manner in which she completed both her application and the follow-up letter raises questions about her attention to details and how carefully she follows instructions. Real estate licensees are required to complete, and to help their clients complete, very complicated documents that contain many disclosures. Failure of a licensee to pay attention to the details of those documents, and to properly complete them, is a serious shortcoming. The Department simply cannot license real estate salespersons or brokers who cannot reliably be expected to complete this task. Therefore, protection of the public interest demands denial of respondent's application.

ORDER

The application of respondent Cindy M. Nguyen for a real estate salesperson license is denied.

DATED: August 13, 2003


MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

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

FILED
MAY 22 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

CINDY M. NGUYEN,

By Kathleen Contreras

Case No. H-8394 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 **AUGUST 6, 2003**, 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.

DEPARTMENT OF REAL ESTATE

Dated: MAY 22, 2003

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel
RE 500 (Rev. 8/97)

1 DEIDRE L. JOHNSON, Counsel
2 SBN 66322
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-0789

FILED
MAY - 6 2003

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 CINDY M. NGUYEN,) NO. H-8394 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 cause of
18 Statement of Issues against CINDY M. NGUYEN, alleges as follows:

19 I

20 CINDY M. NGUYEN (hereafter Respondent), pursuant to the
21 provisions of Section 10153.3 of the Business and Professions
22 Code, made application to the Department of Real Estate of the
23 State of California for a real estate salesperson license on or
24 about June 10, 2002, with the knowledge and understanding that
25 any license issued as a result of said application would be
26 subject to the conditions of Section 10153.4 of the Business and
27 Professions Code.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II

The 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 "Yes," and disclosed an unknown conviction in 1991. In response to a subsequent letter from the Department of Real Estate asking the same question, Respondent answered "No." Respondent failed to disclose the conviction alleged in Paragraph IV below.

IV

On or about January 5, 1998, in the Municipal Court of California, County of Santa Clara, Respondent was convicted of violation of Penal Code Section 484/488 (PETTY THEFT), a crime involving moral turpitude, and/or a crime which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (hereafter the Regulations), to the qualifications, functions, or duties of a real estate licensee.

V

Respondent's failure in the application for licensure to disclose the conviction alleged above constitutes the attempt to procure a real estate license by fraud, misrepresentation or deceit; and/or by making material misstatements of fact in said application; and/or by knowingly making false statements in said application, which is cause for denial of Respondent's

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

3 VI

4 The crime of which Respondent was convicted as alleged
5 above constitutes cause for denial of Respondent's application
6 for a real estate license under Sections 480(a) and 10177(b) of
7 the California Business and Professions Code.

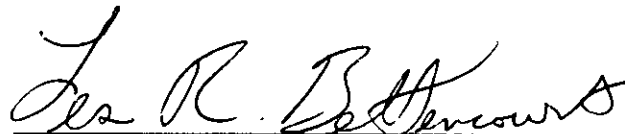
8 WHEREFORE, the Complainant prays that the above-
9 entitled matter be set for hearing and, upon proof of the charges
10 contained herein, that the Commissioner refuse to authorize the
11 issuance of, and deny the issuance of, a real estate salesperson
12 license to Respondent, and for such other and further relief as
13 may be proper in the premises.

14

15

16

17



LES R. BETTENCOURT
Deputy Real Estate Commissioner

18

19

20

21 Dated at Oakland, California

22 this 16th day of April, 2003

23

24

25

26

27