

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

FILED
JUL 16 2004

DEPARTMENT OF REAL ESTATE

Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) NO. H-8701 SF
12 BENJAMIN NGO,)
13 Respondent.) STIPULATION AND
14) WAIVER

15 It is hereby stipulated by and between BENJAMIN NGO
16 (hereinafter "Respondent") and his attorney, Cary Pham, and the
17 Complainant, acting by and through Michael B. Rich, Counsel for
18 the Department of Real Estate, as follows for the purpose of
19 settling and disposing of the Statement of Issues filed on March
20 23, 2004, in this matter:

21 A. Respondent acknowledges that he has received and
22 read the Statement of Issues and the Statement to Respondent
23 filed by the Department of Real Estate in connection with his
24 application for a real estate salesperson license. Respondent
25 understands that the Real Estate Commissioner may hold a hearing
26 on this Statement of Issues for the purpose of requiring further
27 proof of Respondent's honesty and truthfulness and to prove

1 other allegations therein, or that he may in his discretion
2 waive the hearing and grant Respondent a restricted real estate
3 salesperson license based upon this Stipulation and Waiver.
4 Respondent also understands that by filing the Statement of
5 Issues in this matter the Real Estate Commissioner is shifting
6 the burden to Respondent to make a satisfactory showing that
7 Respondent meet all the requirements for issuance of a real
8 estate salesperson license. Respondent further understands that
9 by entering into this stipulation and waiver Respondent will be
10 stipulating that the Real Estate Commissioner has found that
11 Respondent has failed to make such a showing, thereby justifying
12 the denial of the issuance to Respondent of an unrestricted real
13 estate salesperson license.

14 B. Respondent hereby admits that the allegations of
15 the Statement of Issues filed against Respondent are true and
16 correct and requests that the Real Estate Commissioner in his
17 discretion issue a restricted real estate salesperson license to
18 Respondent under the authority of Section 10156.5 of the
19 Business and Professions Code. Respondent understands that any
20 such restricted license will be issued subject to and be limited
21 by Section 10153.4 of the Business and Professions Code.

22 C. Respondent is aware that by signing this
23 Stipulation and Waiver, Respondent is waiving Respondent's right
24 to a hearing and the opportunity to present evidence at the
25 hearing to establish Respondent's rehabilitation in order to
26 obtain an unrestricted real estate salesperson license if this
27 Stipulation and Waiver is accepted by the Real Estate

1 Commissioner. However, Respondent is not waiving Respondent's
2 right to a hearing and to further proceedings to obtain a
3 restricted or unrestricted license if this Stipulation and
4 Waiver is not accepted by the Commissioner.

5 D. Respondent further understands that the following
6 conditions, limitations, and restrictions will attach to a
7 restricted license issued by the Department of Real Estate
8 pursuant hereto:

- 9 1. The license shall not confer any property right in the
10 privileges to be exercised, and the Real Estate
11 Commissioner may by appropriate order suspend the right
12 to exercise any privileges granted under this restricted
13 license in the event of:
- 14 a. The conviction of Respondent (including a plea of nolo
15 contendere) to a crime which bears a substantial
16 relationship to Respondent's fitness or capacity as a
17 real estate licensee; or
- 18 b. The receipt of evidence that Respondent has violated
19 provisions of the California Real Estate Law, the
20 Subdivided Lands Law, Regulations of the Real Estate
21 Commissioner, or conditions attaching to this
22 restricted license.
- 23 2. Respondent shall not be eligible to apply for the
24 issuance of an unrestricted real estate license nor the
25 removal of any of the conditions, limitations or
26 restrictions attaching to the restricted license until
27

1 two years have elapsed from the date of issuance of the
2 restricted license to Respondent.

3 3. With the application for license, or with the application
4 for transfer to a new employing broker, Respondent shall
5 submit a statement signed by the prospective employing
6 broker on a form approved by the Department of Real
7 Estate wherein the employing broker shall certify as
8 follows:

9 a. That broker has read the Statement of Issues which
10 is the basis for the issuance of the restricted
11 license; and

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

17 4. Respondent's restricted real estate salesperson license
18 is issued subject to the requirements of Section 10153.4
19 of the Business and Professions Code, to wit: Respondent
20 is required, within eighteen (18) months of the issuance
21 of the restricted license, to submit evidence
22 satisfactory to the Commissioner of successful
23 completion, at an accredited institution, of two of the
24 courses listed in Section 10153.2, other than real estate
25 principles, advanced legal aspects of real estate,
26 advanced real estate finance, or advanced real estate
27 appraisal. If Respondent fails to timely present to the

1 Department satisfactory evidence of successful completion
2 of the two required courses, the restricted license shall
3 be automatically suspended effective eighteen (18) months
4 after the date of its issuance. Said suspension shall
5 not be lifted unless, prior to the expiration of the
6 restricted license, Respondent has submitted the required
7 evidence of course completion and the Commissioner has
8 given written notice to Respondent of the lifting of the
9 suspension.

10 5. Pursuant to Section 10154, if Respondent has not
11 satisfied the requirements for an unqualified license
12 under Section 10153.4, Respondent shall not be entitled
13 to renew the restricted license, and shall not be
14 entitled to the issuance of another license which is
15 subject to Section 10153.4 until four years after the
16 date of the issuance of the preceding restricted license.

17
18
19
20 DATED May 21, 2004

Michael B. Rich
MICHAEL B. RICH, Counsel
DEPARTMENT OF REAL ESTATE

21
22 * * *

23 I have read the Stipulation and Waiver, have discussed
24 it with my counsel, and its terms are understood by me and are
25 agreeable and acceptable to me. I understand that I am waiving
26 rights given to me by the California Administrative Procedure
27

1 Act (including but not limited to Sections 11506, 11508, 11509,
2 and 11513 of the Government Code), and I willingly,
3 intelligently, and voluntarily waive those rights, including the
4 right of a hearing on the Statement of Issues at which I would
5 have the right to cross-examine witnesses against me and to
6 present evidence in defense and mitigation of the charges.

7
8 5/17/04
9 DATED


BENJAMIN NGO
Respondent

10
11 *I have reviewed the Stipulation and Agreement as to form and content
and have advised my client accordingly.*

12
13 5/17/04
14 DATED

C. Pham
CARY PHAM
Attorney for Respondent

15
16 I have read the Statement of Issues filed herein and
17 the foregoing Stipulation and Waiver signed by Respondent. I am
18 satisfied that the hearing for the purpose of requiring further
19 proof as to the honesty and truthfulness of Respondent need not
20 be called and that it will not be inimical to the public
21 interest to issue a restricted real estate salesperson license
22 to Respondent.


23 Therefore, IT IS HEREBY ORDERED that a restricted real
24 estate salesperson license be issued to Respondent if Respondent
25 has otherwise fulfilled all of the statutory requirements for
26 licensure. The restricted license shall be limited,
27

1 conditioned, and restricted as specified in the foregoing
2 Stipulation and Waiver.

3 This Order is effective immediately.

4 IT IS SO ORDERED June 2, 2004.

5 JOHN R. LIBERATOR
6 Acting Real Estate Commissioner

7 
8 _____

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED
APR 21 2004

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

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

BENJAMIN NGO

By Shelly Ely

Case No. H-8701 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, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **THURSDAY--MAY 20, 2004**, at the hour of **9:00 A.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 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 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: APRIL 21, 2004

By Michael B. Rich
MICHAEL B. RICH, Counsel

1 MICHAEL B. RICH, Counsel
2 Sate Bar No. 84257
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007

6 Telephone: (916) 227-0789
7 (916) 227-1126

FILED

MAR 23 2004

DEPARTMENT OF REAL ESTATE

By *Jean Arnold*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)

12 BENJAMIN NGO,)

13)
14 Respondent.)

No. H-8701 SF

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 BENJAMIN NGO (hereinafter "Respondent"), is
18 informed and 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 March 20, 2003, 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 Business and Professions Code.

26 ///

27 ///

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

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 November 15, 2000, in the Superior Court, County of Santa Clara, Respondent was convicted of a violation of Section 23300 of the California Business and Professions Code (Selling Liquor Without a License), 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.

9
10
11 
12 LES R. BETTENCOURT
Deputy Real Estate Commissioner

13 Dated at Oakland, California,
14 this 17th day of March, 2004.

15
16
17
18
19
20
21
22
23
24
25
26
27