

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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FILED
SEP - 2 2004

DEPARTMENT OF REAL ESTATE

By Laurie G. Zi

In the Matter of the Application of)
THUAN V. NGUYEN,)
Respondent.)

NO. H-8735 SF

OAH NO. N-2004050250

DECISION

The Proposed Decision dated August 6, 2004, 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 SEPTEMBER 22, 2004.

IT IS SO ORDERED August 18, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

THUAN V. NGUYEN,

Respondent.

No. H-8735 SF

OAH No. N2004050250

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on June 30, 2004, in Oakland, California.

Department of Real Estate Counsel David B. Seals represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

Respondent Thuan V. Nguyen appeared and represented himself.

The matter was submitted on June 30, 2004.

FACTUAL FINDINGS

1. Respondent Thuan V. Nguyen submitted to the Department of Real Estate (Department) an application for a real estate salesperson license. The application was dated July 16, 2002, and the Department received it on July 18, 2002.

2. On April 21, 1994, in the Municipal Court of California, Santa Clara County Judicial District, respondent was convicted on a plea of guilty of a violation of Penal Code section 664 and Vehicle Code section 10851, subdivision (a), (felony attempted unlawful taking of vehicle) and a violation of Penal Code section 459 and section 460, subdivision (b), (felony second degree burglary). On June 6, 1994, in the Santa Clara County Superior Court, respondent was placed on probation for two years. Conditions of probation included serving 30 days in county jail, performing 50 hours of volunteer service and paying restitution.

3. On April 20, 1995, the court found respondent in violation of his probation and sentenced him to eight months in county jail, with credit for time served of 74 days (50 days' actual time). Work furlough was recommended. Although the court documents reflect that respondent's probation was reinstated on the original terms and conditions, respondent testified that his probation was extended and that he completed probation in 1997 or 1998.

4. On February 7, 2002, the court granted respondent's petition to reduce the felony convictions to misdemeanors and to set aside the convictions pursuant to Penal Code section 1203.4.

5. The facts and circumstances of respondent's convictions are that on March 7, 1994, when he was 18 years old, respondent broke into a parked car with the intent to steal it. After unsuccessfully trying to start the car, he decided to steal the stereo. At this point, police officers arrived and arrested respondent and the friend who was with him in the car. Respondent explains that this was right before he graduated from high school, and he was hanging around with bad people. He and his friends used to steal cars and take joy rides, and, if the car had a stereo, they would steal that and sell it.

6. After spending eight months in jail, respondent saw his life going downhill and he resolved to change his ways. In 1998, he joined the United States Marine Corps Reserves, where he spent a total of one year in training and school. Respondent rose to the rank of sergeant in four years, and he recently completed six years in the active reserves. He will be in the inactive reserves until 2006.

7. Respondent has also pursued higher education. He attended Evergreen Valley College, where he received an A.A. degree in June 2001. Respondent transferred to San Jose State University, where he received a B.S. in business administration in December 2002. He was a member of the Phi Theta Kappa Society (an international scholastic order) at Evergreen Valley College and a member of the Golden Key International Honor Society at San Jose State. At the time of the hearing, respondent was enrolled in a program at San Jose City College to earn a certificate in computer programming, and he was planning to start the M.B.A. program at San Jose State in August 2004.

8. Respondent has held various jobs, including a job at Longs Drugs and a job at Fry's Electronics. He would like to have a real estate license as "security," so that he could work in that field in the future.

9. Now 28 years old, respondent lives with his fiancée and their two and one-half year-old daughter. They are expecting another child.

10. Respondent fully acknowledges that his criminal activities as a teenager were wrong. He has no association with the persons with whom he used to engage in such activities.

11. Respondent has not completed all the courses required under Business and Professions Code section 10153.4.

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LEGAL CONCLUSIONS

1. Respondent's convictions were for crimes involving moral turpitude that are substantially related to the qualifications, functions or duties of a real estate licensee.¹ Cause therefore exists to deny respondent's license application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

2. It has been ten years since respondent's convictions and six or seven years since he completed his criminal probation. In that time, respondent has led a law-abiding and productive life, serving in the military and attending college. It would not be contrary to the public interest to grant him a restricted real estate license.

ORDER

The application of respondent Thuan V. Nguyen for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to him 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 that 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. Respondent's conviction, including by 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. 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 the 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

¹ Title 10, California Code of Regulations, section 2910, sets forth the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves "[d]oing any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator..." (subd. (a)(8)), and an attempt to commit such a crime is also substantially related (subd. (b)).

restrictions attaching to the restricted license until two 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 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 real estate 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 18 months of the issuance of the restricted license, submit evidence satisfactory to the Real Estate 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 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: August 6, 2004


NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

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

FILED

MAY 10 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

THUAN V. NGUYEN,

Case No. H-8735 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, JUNE 30, 2004**, at the hour of **1:30 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 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.

Dated: MAY 10, 2004

DEPARTMENT OF REAL ESTATE

By David B. Seals
DAVID B. SEALS, 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)
7

FILED

APR 23 2004

DEPARTMENT OF REAL ESTATE

Laurie A. Zin

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of)

No. H-8735 SF

12 THUAN V. NGUYEN,)

STATEMENT OF ISSUES

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

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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 July 18, 2002 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
25 10153.4 of the California 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.

III

On or about June 6, 1994, in the Superior Court of the State of California, in and for the County of Santa Clara, Respondent was convicted of violation of California Vehicle Code Section 664/10851 (Attempted Drive or Take a Vehicle) a felony and California Penal Code Section 459/460 (Second Degree Burglary, both crimes involving moral turpitude and/or which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

IV

The crimes of which Respondent was convicted, as alleged in Paragraph III above constitute 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.

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

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9 LES R. BETTENCOURT
Deputy Real Estate Commissioner

10 Dated at Oakland, California,
11 this 20th day of April, 2004.