

FILED

NOV 27 2007

DEPARTMENT OF REAL ESTATE

By Jean Arumeh

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of) No. H-8758 SF
MINH NGOC NGUYEN,)
Respondent.)

ORDER GRANTING UNRESTRICTED LICENSE

On September 8, 2004, a Decision was rendered herein denying the Respondent's application for real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on October 23, 2004, and Respondent has operated as a restricted licensee since that time.

On November 27, 2006, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's Petition and the evidence submitted in support thereof including Respondent's

1 record as a restricted licensee. Respondent has demonstrated to
2 my satisfaction that Respondent meets the requirements of law for
3 the issuance to Respondent of an unrestricted real estate
4 salesperson license and that it would not be against the public
5 interest to issue said license to Respondent.

6 NOW, THEREFORE, IT IS ORDERED that Respondent's
7 petition for removal of restrictions is granted and that a real
8 estate salesperson license be issued to Respondent subject to the
9 following understanding and conditions:

10 1. The license issued pursuant to this order shall be
11 deemed to be the first renewal of respondent's real estate
12 salesperson license for the purpose of applying the provisions of
13 Section 10153.4.

14 2. Within nine (9) months from the date of this order
15 respondent shall:

16 (a) Submit a completed application and pay the
17 appropriate fee for a real estate salesperson license, and

18 (b) Submit evidence of having taken and successfully
19 completed the courses specified in subdivisions (a) (1), (2), (3)
20 and (4) of Section 10170.5 of the Real Estate Law for renewal of
21 a real estate license.

22 3. Upon renewal of the license issued pursuant to this
23 order, respondent shall submit evidence of having taken and
24 successfully completed the continuing education requirements of
25 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
26 real estate license.

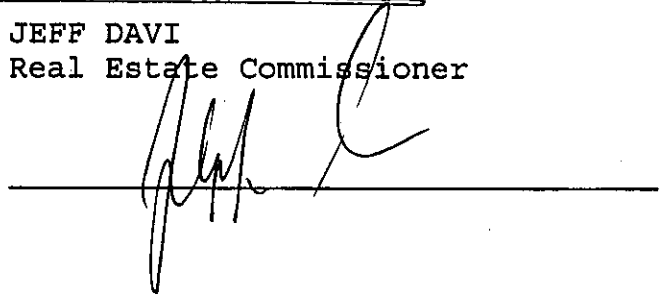
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This Order shall become effective immediately.

IT IS SO ORDERED 11.20., 2007.

JEFF DAVI
Real Estate Commissioner

A handwritten signature in black ink, appearing to read 'Jeff Davi', is written over a horizontal line.

FILED
SEP 14 2004

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Application of)
MINH NGOC NGUYEN,) NO. H-8758 SF
Respondent.) OAH NO. N-2004050321

DECISION

The Proposed Decision dated August 20, 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 OCTOBER 5, 2004.

IT IS SO ORDERED

September 8, 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:

MINH NGOC NGUYEN,

Respondent.

Case No. H-8758 SF

OAH No. N2004050321

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on July 29, 2004, in Oakland, California.

James L. Beaver, Counsel, Department of Real Estate, represented complainant.

Respondent Minh Ngoc Nguyen appeared on his own behalf.

The case was submitted for decision on July 29, 2004.

FACTUAL FINDINGS

1. Les R. Bettencourt (complainant) is a Deputy Real Estate Commissioner of the State of California. He made the statement of issues in his official capacity.

2. Minh Ngoc Nguyen (respondent) made application to the Department of Real Estate (Department) for a real estate salesperson license on July 2, 2003. He did so with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Business and Professions Code section 10153.4.

3. On November 21, 1997, in the Municipal Court of California, County of Alameda, Oakland-Piedmont-Emerlyville Judicial District, respondent was convicted, following a no contest plea, of violating Business and Professions Code section 5050 (Practicing Public Accounting Without a License). This is a misdemeanor offense that bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

Respondent was placed on two years court probation, the terms of which included participation in a ten day community project, payment of a \$1,457.00 fine to the Board of Accountancy and cessation of practicing accountancy without a license. He complied with the terms of his sentence and he is no longer on probation.

4. On May 18, 1998, respondent submitted an application to the Department of Insurance for licensure as a life agent. In answer to the question of whether he had ever been convicted of a crime he checked the "No" box. He was issued a life agent license by the Department of Insurance on July 13, 1998. On July 22, 1999, following an administrative hearing (OAH No. N1999030161) respondent's license as a life agent was revoked. There was an express finding that he had knowingly or willfully made a misstatement in his application to the insurance commissioner in violation of Business and Professions Code section 1668, subdivision (h). It was also determined that he had shown incompetence or untrustworthiness in the conduct of any business, or had by commission of a wrongful act or practice in the course of any business exposed the public or those dealing with him to the danger of loss. (Bus. & Prof. Code, § 1668, subd. (j).)

5. Respondent came to the United States from Vietnam in 1981. At the time he was raising his three children as a single parent. He attended college and by 1995 graduated with a bachelor's degree in accounting. He then associated with Richard Weld, a certified public accountant. Difficulties and problems with this business arrangement followed and by April 1997, Mr. Weld told respondent that he no longer wished to associate with him professionally. Respondent was asked to refrain from using signage, business cards and letterhead that implied that he was working with or under Mr. Weld's auspices. He was specifically asked to remove a sign on the building which he failed to do. The sign remained up through September 1997. After a complaint was filed with the Board of Accountancy respondent was cited for holding himself out as a certified public accountant without a license.

Respondent acknowledges that his actions were improper. He explains that the sign was at the top of the building and that he could not remove it himself. He had to arrange for a professional contractor to come and remove it. He also notes that he was not in that particular office full time and that he was very occupied caring for his children.

6. Respondent acknowledges his mistake in failing to disclose the conviction on his application to the Department of Insurance. He did disclose the conviction on his application to the Department of Real Estate. When he completed the Department of Insurance application there was some confusion in his mind over the legal significance of a no-contest plea. He understood that he had been convicted but he was unsure whether he was required to disclose the conviction given his plea. He did not ask for clarification at the time and he now understands that he should have asked someone if he was not sure what needed to be disclosed.

7. Respondent completed a graduate MBA program in 2001 at California State University Hayward. He is now self-employed as a business consultant and tax advisor. His business is in Oakland and is called "MT Tax & Financial Consulting." He is a member of the National Society of Accountants and also the Accreditation Council for Accountancy and Taxation. He is a past president of the East Lake Merchant Association. As president he helped promote and improve the business climate of what was once a high crime area in

Oakland. He organized the local Asian Merchant Association and he worked to obtain state and federal funding to benefit the Asian community.

Respondent apologizes for his mistakes. He notes that he has learned from his past, that his career is on the right track and that he wants to do everything he can to maintain his family and contribute to society. He wants a real estate salesperson license because much of his tax work is seasonal. He believes real estate advising would be helpful in serving his client's interests.

8. Respondent has remarried. His wife is a physician. Their children are ages 15, 19 and 20. Two are in college. Supporting and providing well for his family continue to be priorities in his life.

Reference letters from Ramesh Patel, CPA; Kallirroe Tipton, Tax Clinic Director, California State University, Hayward; and Michael Shields, M.S. Taxation, enrolled agent, were considered. Respondent is highly regarded within his professional community. His leadership within and service to the Asian community are well recognized. Respondent pursued graduate MBA studies and then worked very hard to establish himself professionally as a tax and financial consultant. In the process he has had to overcome difficult life circumstances and he has learned to persevere in achieving his goals. Over six years have passed since his conviction. He has acknowledged and learned from his mistakes. Given all these circumstances it would not be contrary to the public interest to issue him a restricted license at this time.

LEGAL CONCLUSIONS

1. Cause for denial of respondent's application for a real estate license exists under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), by reason of the matters set forth in Finding 3. Respondent was convicted of a crime that bears a substantial relationship to the qualifications, functions or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910.)

2. Cause for denial of respondent's application for a real estate license exists under Business and Professions Code section 10177, subdivision (f), by reason of the matters set forth in Finding 4. Respondent acted or conducted himself in a way that would have warranted the denial of his application for a real estate license, or has had his license revoked by another agency of this state for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a real estate license.

3. The matters set forth in Findings 5 through 8 have been considered. It would not be contrary to the public interest to issue respondent a restricted license at this time.

ORDER

The application of respondent Minh Ngoc Nguyen 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 the 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 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 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: 2/17/04



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

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

FILED
MAY 13 2004

DEPARTMENT OF REAL ESTATE

By Laurie A. Zini

In the Matter of the Application of

MINH NGOC NGUYEN,

} Case No. H-8758 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 **THURSDAY, JULY 29, 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.

DEPARTMENT OF REAL ESTATE

By James L. Beaver
JAMES L. BEAVER, Counsel

Dated: MAY 13, 2004

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED

APR 29 2004

DEPARTMENT OF REAL ESTATE

Laurie G. Jones

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 MINH NGOC NGUYEN,)
13 Respondent.)

No. H-8758 SF

STATEMENT OF ISSUES

14
15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against MINH NGOC NGUYEN (herein "Respondent"), alleges
18 as 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 made application to the Department of Real
25 Estate of the State of California for a real estate salesperson
26 license on or about July 2, 2003 with the knowledge and
27 understanding that any license issued as a result of said

1 application would be subject to the conditions of Section
2 10153.4 of the California Business and Professions Code (herein
3 "the Code").

4 III

5 On or about November 21, 1997, in the Municipal Court
6 Of The State Of California, County of Alameda, Respondent was
7 convicted of the crime of Practicing Public Accountancy Without
8 A License in violation of Business and Professions Code Section
9 505, a misdemeanor and a crime involving moral turpitude which
10 bears a substantial relationship under Section 2910 of Chapter
11 6, Title 10, California Code of Regulations (herein "the
12 Regulations"), to the qualifications, functions or duties of a
13 real estate licensee.

14 IV

15 On or about July 22, 1999, after giving Respondent
16 fair notice of the charges, an opportunity for a hearing, and
17 the other due process protections afforded by the Administrative
18 Procedure Act, Respondent's license as a Life Agent in the State
19 of California was revoked by the California Department of
20 Insurance, upon an express finding of a violation of the
21 provisions of Sections 1668(h) and 1668(j) of the California
22 Insurance Code in conjunction with Section 1738 of the
23 California Insurance Code for acts which, if done by a real
24 estate licensee, would be grounds for the suspension or
25 revocation of a California real estate license pursuant to the
26 provisions of Sections 490, 498, 10177(a) and 10177(b) of the
27 Business and Professions Code.

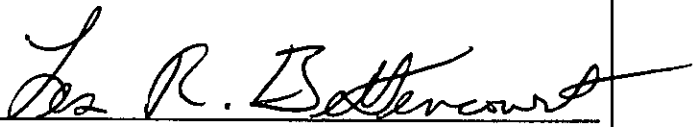
1 V

2 Respondent's criminal conviction described in
3 Paragraph III, above, constitutes cause for denial of
4 Respondent's application for a real estate license under
5 Sections 480(a) and 10177(b) of the California Business and
6 Professions Code.

7 VI

8 The facts described in Paragraph IV, above, constitute
9 cause for denial of Respondent's application for a real estate
10 license under Section 10177(f) of the Code.

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

17
18 
19 LES R. BETTENCOURT
Deputy Real Estate Commissioner

20 Dated at Oakland, California,
21 this 22nd day of April, 2004.