FILED
FEB 24 2005
DEPARTMENT OF REAL ESTATE
By K. Contreras

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

In the Matter of the Application of	)	
	)	NO. H-8784 SF
MIMI DU QUACH,	)	
	)	N-2004070453
Respondent.	)	

DECISION

The Proposed Decision dated January 26, 2005, 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 March 16, 2005.

IT IS SO ORDERED 2-23-05, 2005.

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of: MIMI DU QUACH, Respondent.	No. H-8784 SF OAH No. N 2004070453

PROPOSED DECISION

Administrative Law Judge Victor D. Ryerson, Office of Administrative Hearings, State of California, heard this matter on November 1, 2004, in Oakland, California.

Department of Real Estate Counsel Deidre L. Johnson represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

Denise M. Zingale, Attorney at Law, represented respondent Mimi Du Quach, who was present.

The matter was submitted on November 1, 2004.

FACTUAL FINDINGS

1. Respondent Mimi Du Quach submitted to the Department of Real Estate (Department) an application for a real estate salesperson license on September 19, 2003.

2. On May 14, 1993, the Superior Court of California, Santa Clara County, convicted respondent on a plea of nolo contendere of violating Penal Code section 476a (willfully drawing check for payment, with intent to defraud, with knowledge of insufficient funds for payment thereof), a felony. The court suspended imposition of a sentence, and placed respondent on formal probation for three years. As a condition of probation respondent completed a four-month electronic monitoring program in lieu of incarceration in county jail. She was also required to pay a restitution fine of $200 and additional fees and costs of $160. She was not ordered to pay restitution to the victims.

3. Respondent and her husband at one time owned two Asian food markets, one in Daly City and the other in Sunnyvale. The Sunnyvale market was badly damaged in the 1989 Loma Prieta earthquake, and had to be closed for three months. In 1991 a former employee started a market in direct competition with the Sunnyvale store, and the 1992 economic downturn had an impact on both of the Quachs' businesses. These events resulted

in significant financial losses for the Quachs, and by early 1992 they were in the process of selling their Daly City market to cover their expenses.

Respondent and her husband each wrote checks to suppliers, knowing that there were no funds available for payment of the checks. Respondent wrote four such checks to Superior Meats in payment for meat orders, the first on July 17, 1992, against a Sumitomo Bank of California account that had insufficient funds, and the remaining three in mid-September of that year against a California National Bank account that was closed. The total amount of the four checks was $6,084.22. Respondent's conviction was based upon writing these four checks.

4. Respondent's explanation for writing bad checks is essentially based upon a cultural difference: She is originally from Vietnam, and she testified that the custom and practice in the Asian community is to make post-dated checks, which are regarded as promissory notes and negotiated only when the maker indicates to the payee that the money is available. She attributes Superior Meats' pursuing the matter with authorities to the fact that it is not owned by Asians, and therefore that it did not understand the procedure she normally followed.

Respondent's testimony about the treatment of post-dated checks in the Asian community is uncontradicted. However, her explanation of the events that led to her conviction is somewhat curious, particularly in that she wrote three of the checks to Superior Meats against an account that had been closed, and therefore she could not have covered those checks even if funds had become available to deposit into the account. Nevertheless, as a result of that conviction she has learned that what she did was not lawful, and she testified credibly that she would not do it again. There is no evidence that respondent has committed any crime other than that for which she was convicted in 1993.

5. Respondent's husband was also convicted of writing bad checks to suppliers as a result of the same set of events. The court ordered him to make restitution to the victims as a condition of his probation. Although respondent was not ordered to pay restitution, she helped him make the payments, and the entire amount, $22,142.91, was fully paid by September 3, 2004.

6. Respondent previously applied to the Department for a real estate salesperson license on February 8, 2001. She failed to disclose her conviction in that application, and in its Decision after Rejection in case number H.-7966 SF, filed April 23, 2002, the Department denied the application on grounds that respondent made a false and material misstatement, and that she had been convicted of a crime involving fiscal misrepresentation.

Respondent testified then, as now, that when she filled out the previous application for a real estate salesperson license, she did not understand that she had to disclose her conviction, so she answered "No" to Question 25, which asked for such disclosure. However, the Department rejected this explanation in its Decision after Rejection because respondent had "no reasonable basis for believing that her 'No' answer to Question 25 on the application was correct," and judicial notice is taken of this fact. Respondent testified in the present case that she has learned she must make this disclosure, and did so in her 2003 application. This testimony is credible.

7. Respondent has completed her probation. On March 3, 2004, the court reduced her conviction to a misdemeanor under Penal Code section 17, and on September 24, 2004, expunged the conviction pursuant to Penal Code section 1203.4. Respondent understands that the existence of these court orders does not affect her disclosure obligation in licensing matters.

8. Respondent is a 48-year-old woman who immigrated to the United States from Vietnam in 1978. She speaks Vietnamese and five Chinese dialects. Since 1999 she has worked for Express Interpreters in the medical field, acting as an interpreter for non-English speaking patients. The owner of Express Interpreters, Nicole Duong, has been a friend of respondent for many years and knows about her criminal conviction. Duong wrote a letter dated September 9, 2001, on respondent's behalf to support her previous application, describing her as hardworking, honest and trustworthy. Respondent has submitted a copy of the same letter to support her application in this matter.

9. If she is granted a real estate salesperson license, respondent plans to work for Millennium 2000 Realty, Inc. in San Jose. Michael Chu is the president and licensed broker of the firm. Respondent says she currently helps him with paperwork. When Chu first agreed to hire respondent in February 2001, she had not told him about her conviction, and he signed the previous application as her sponsoring broker without that knowledge. Sometime before the hearing on her 2001 license application she informed him of the conviction.

In a letter in support of that application that he wrote after she told him about the conviction Chu expressed his confidence that respondent will be an honest and trustworthy licensee and stated that he is willing to closely supervise her if she is issued a restricted license. His position apparently has not changed: Respondent furnished an identical copy of the same letter in the present matter bearing Chu's original signature and a new date (September 17, 2003) in his handwriting. The old date (September 19, 2001) is stricken out by hand.

10. Respondent belongs to several benevolent and/or religious organizations in the Chinese/Vietnamese Buddhist community, including the Tzu Chi Foundation USA. She does volunteer work on projects sponsored by these groups, including visiting patients in nursing homes and providing food to persons in emergency housing. Respondent has also volunteered her services to the American Cancer Society to provide cancer information to Chinese speakers.

11. Respondent submitted several letters from friends and associates attesting to her honesty and good character and her volunteer work in the community. In addition to the letters described in Factual Findings 8 and 9, these include two written in 1993 for the

sentencing hearing, and another written September 12, 2001. The age of these letters lessens their evidentiary value in the present matter.

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

LEGAL CONCLUSIONS

1. Respondent's conviction for drafting checks on insufficient funds was for a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee. Cause to deny respondent's license application therefore exists under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

2. The fact that respondent failed to disclose her conviction in her 2001 application constitutes cause to deny her present license application under Business and Professions Code sections 480, subdivision (a), and 10177, subdivisions (a) and/or (f). However, the present application should not be denied under the circumstances. Respondent credibly testified that she has learned she must disclose all convictions, and she did so in her current application. There is nothing more she could do to remedy her past actions in this regard, and her previous violation should not be asserted as a bar to her present application.

3. Respondent's conviction is nearly 12 years old. Although it was a serious conviction in relation to the duties and activities of a real estate licensee, she has corrected her course of conduct since that time. She has no record of other offenses or dishonest acts, and she has had stable employment ever since her conviction, working at her current job for the past five years. She helped her husband make full restitution to the victims of their bad check writing, even though the court did not impose this requirement as a condition of her own probation. She has consistently performed volunteer work for community organizations. She seems genuinely concerned about redeeming her good name in her community. Significantly, she has the support of her sponsoring broker, who promises to exercise close supervision of her activities if the Department grants her a license.

The cultural differences respondent claims as the reason she wrote bad checks help to explain her actions to some extent. She has lived entirely within the Asian-American community since her arrival from Vietnam in 1978, and it is plausible that its members follow business customs and practices brought from Asia. The complainant has produced no evidence that those practices are other than what respondent has described. More importantly, however, respondent has learned from her conviction that what she did is not acceptable, and has not repeated her mistake. She is sufficiently rehabilitated to satisfy the requirements for issuance of a restricted license.

The public would be adequately protected by allowing respondent to obtain a restricted license under which conditions, limitations, or restrictions could not be removed for a period of three years.

ORDER

The application of respondent Mimi Du Quach for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to her 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.

   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 restrictions attaching to the restricted license, until three years have elapsed from the date of issuance of the restricted license to respondent.

3. With the application for a 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: January 26, 2005

VICTOR D. RYERSON
Administrative Law Judge
Office of Administrative Hearings

FILED
OCT 22 2004
DEPARTMENT OF REAL ESTATE
By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE STATE OF CALIFORNIA

In the Matter of the Application of

MIMI DU QUACH,

Respondent

Case No. H-8784 SF

OAH No. N-2004070453

THIRD CONTINUED 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

OFFICE OF ADMINISTRATIVE HEARING
THE ELIHU HARRIS STATE BUILDING
1515 CLAY STREET, SUITE 206
OAKLAND, CALIFORNIA 94612

on **NOVEMBER 1, 2004**, at the hour of **1:30 PM**, 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 subpenas 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: OCTOBER 22, 2004

By
DEIDRE L. JOHNSON, Counsel

RE 500 (Rev. 8/97)

FILED

SEP - 7 2004

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

MIMI DU QUACH,

Respondent

Case No. H-8784 SF

OAH No. N-2004070453

SECOND CONTINUED
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

OFFICE OF ADMINISTRATIVE HEARING
THE ELIHU HARRIS STATE BUILDING
1515 CLAY STREET, SUITE 206
OAKLAND, CALIFORNIA 94612

on **OCTOBER 20, 2004**, at the hour of **1:30 PM**, 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 subpenas 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: September 2, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

RE 500 (Rev. 8/97)

FILED
JUL 14 2004
DEPARTMENT OF REAL ESTATE
By Kathleen Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

MIMI DU QUACH,

Respondent

Case No. H-8784 SF

OAH No.

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

OFFICE OF ADMINISTRATIVE HEARING
THE ELIHU HARRIS STATE BUILDING
1515 CLAY STREET, SUITE 206
OAKLAND, CALIFORNIA 94612

on **AUGUST 25, 2004**, at the hour of **1:30 PM**, 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 subpenas 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: JULY 14, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

RE 500 (Rev. 8/97)

DEIDRE L. JOHNSON, Counsel
SBN 66322
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Sacramento, CA 95818-7007

Telephone: (916) 227-0789

FILED
MAY 18 2004
DEPARTMENT OF REAL ESTATE
By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of
MIMI DU QUACH,
Respondent.

NO. H-8784 SF

STATEMENT OF ISSUES

The Complainant, LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, for cause of Statement of Issues against MIMI DU QUACH, alleges as follows:

I

MIMI DU QUACH (hereafter Respondent) made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about September 19, 2003, with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Section 10153.4 of the Business and Professions Code.

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

On or about June 22, 1993, in the Superior Court of California, County of Santa Clara, Respondent was convicted of violation of Section 476(a) of the California Penal Code (DRAFTING CHECKS ON INSUFFICIENT FUNDS), a felony, a crime involving moral turpitude, and/or a crime that bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about February 8, 2001. In responses to Question 25 of said 2001 application, to wit: "Have you ever been convicted of any violation of law?", Respondent answered "No."

V

Respondent's failure to reveal the conviction set forth in Paragraph III above in said 2001 application constituted the attempt to procure a real estate license by fraud, misrepresentation or deceit; or by making a material misstatement of fact in said application.

VI

Effective on or about May 13, 2002, in Case No. H-7966 SF, OAH Case No. N-2001070282, before the State of California Department of Real Estate, the 2001 real estate salesperson license application of Respondent was denied pursuant to Sections 480(a), 480(c), 10177(a), and 10177(b) of the Code. The grounds for denial were based in whole or in part on acts which, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license.

VII

The facts alleged in Paragraphs IV, V, and VI above constitute cause for denial of Respondent's application for a real estate salesperson license under Sections 480(c), 10177(a), and/or 10177(f) of the Code.

VIII

The crime of which Respondent was convicted as alleged in Paragraph III above constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and/or 10177(b) of the Code.

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

Les R. Bettencourt

LES R. BETTENCOURT
Deputy Real Estate Commissioner

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