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FILED
MAY 23 2007
DEPARTMENT OF REAL ESTATE

By Juan Armenta

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of) No. H-8905 SF
PHONG THAI HUYNH,)
Respondent.)

ORDER GRANTING UNRESTRICTED LICENSE

On February 2, 2005, a Decision was rendered herein denying Respondent's application for a 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 April 5, 2005, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On July 11, 2006, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

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1 I have considered Respondent's Petition and the
2 evidence submitted in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate
6 salesperson license and that it would not be against the public
7 interest to issue said license to Respondent.

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

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

16 2. Within nine (9) months from the date of this order
17 Respondent shall:

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

20 (b) Submit evidence of having taken and successfully
21 completed the courses specified in paragraphs (1) to (4)
22 inclusive of subdivision (a) of Section 10170.5 of the Real
23 Estate Law for renewal of a real estate license.

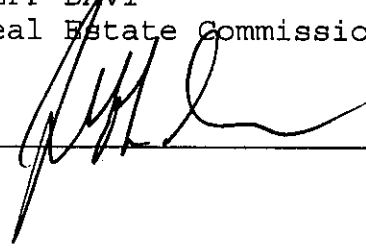
24 3. Upon renewal of the license issued pursuant to this
25 order, Respondent shall submit evidence of having taken and
26 successfully completed the continuing education requirements of
27

1 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
2 real estate license.

3 This Order shall become effective immediately.

4 IT IS SO ORDERED 4-24, 2007.

5 JEFF DAVI
6 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

PHONG THAI HUYNH,

Respondent.

Case No. H-8905 SF

OAH No. N2004090457

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on December 2, 2004.

Staff Counsel David Seals represented Complainant Les R. Bettencourt.

Respondent Phong Thai Huynh represented himself.

The record was left open to receive letters of reference from Respondent. Two letters were timely received, marked collectively as Exhibit C, and admitted into evidence. The record closed on December 16, 2004.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt filed the statement of issues in his official capacity as a deputy real estate commissioner for the Department of Real Estate, (Department) State of California.

2. On April 6, 2004, Respondent filed an application for a real estate salesperson license with the Department. Respondent revealed a 2001 conviction for theft as required in the application form. The application was made with the understanding that any license issued as a result would be subject to the conditions of Business and Professions Code section 10153.4.

Criminal conviction

3. On March 8, 2001, in the Alameda County Municipal Court for the Fremont-Newark-Union City Judicial District, Respondent was convicted by his plea of no contest of a misdemeanor violation of Penal Code section 484, subdivision (a) (theft). As a result, he was placed on probation for three years pursuant to standard conditions and ordered to serve 30 days in county jail through the Alameda County Sheriff's Department Weekend Work

Program. Respondent was also ordered to pay fines and fees totaling \$127 and to stay away from Fry's Electronics stores while on probation.

4. The facts and circumstances surrounding the conviction are as follows: Respondent assisted Hong Nguyen in concealing a Casio EM500 Pocket PC Cassiopaia, valued at \$499.99, inside a CD wallet. Nguyen went by herself to the cashier, purchased the CD wallet without revealing the presence within of the pocket PC and left the store. She was immediately detained by store personnel. Respondent was located outside of the store a short time later and also detained.

5. Respondent successfully completed his term of criminal probation, including the work program and payment of fines. On March 29, 2004, the court granted his petition to dismiss the case pursuant to Penal Code section 1203.4.

Respondent's evidence

6. Fry's Electronics filed a small claims court action against Respondent to recover damages associated with the theft.¹ By money order dated July 1, 2003, Respondent paid the company \$419.50 in full settlement of that matter.

7. At the time of the incident that led to his conviction, Respondent was a freshman in college. Respondent testified that he was shopping with a friend, Hong Nguyen, when she told him that she had always wanted a Casio Pocket PC. He told Nguyen that it would be pretty easy to take it out of the store, and he held the CD wallet while Nguyen inserted the item. Although Respondent felt at the time that "it was kind of a joke," told Nguyen "not to do it," and left the store before she did, he understands that he was a party to the theft.

8. Respondent was very forthcoming about the incident and its affect on his life. He believes that he learned a great deal from his experience, and described it as the biggest mistake he has ever made. Respondent resolved to never make such a mistake again and said that even thinking of stealing is wrong. He no longer associates with Hong Nguyen.

9. Respondent graduated from California State University at Hayward in June 2004 with a degree in business administration and computer information systems. He is very interested in the real estate field, and studied hard for the exam. Respondent has worked as an assistant to real estate broker David Allred and currently works for SBC Internet Services in technical support. He is very active in his church and prepares a program for every Sunday's service.

10. Respondent submitted two letters of reference.

¹ The lawsuit was filed pursuant to Penal Code section 490.5, subdivision (c).

A. David Allred is a real estate broker with Paragon Financial in Oakland. He writes that Respondent informed him of his theft conviction, but that Allred hired Respondent nonetheless. Respondent "has shown nothing but honesty and ethical behavior," and Allred recommends that Respondent receive a real estate salesperson license.

B. Rev. Dr. Tan D. Nguyen is the senior pastor of East Bay Vietnamese Alliance Church in Castro Valley. Rev. Nguyen has known Respondent since 1995, when Respondent joined the church. In pertinent part, he writes:

[Respondent] attends church regularly on Sunday, joins the Bible Study Group on Friday nights, and actively participates in the youth group meetings and social activities as a member and one of the leaders. During the last 4 years, he also serves in the Sunday Programs and as a light and multimedia engineer. By serving the Vietnamese community, [Respondent] has proven to be a mature, ethical, and responsible person...

I would recommend [Respondent] to any position requiring strong character, a pleasant and positive attitude, leadership, integrity and high ethical standards.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that a real estate license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the profession. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be denied if the applicant has been convicted of a crime involving moral turpitude. By reason of the matters set forth in Finding 3, cause for denial of Respondent's application exists pursuant to both sections. Theft is substantially related to real estate sales and involves moral turpitude.

2. A primary purpose of the licensing scheme for real estate professionals is to protect the public from dishonest and unscrupulous licensees. It is particularly important that real estate salespersons possess the character traits of honesty and integrity, and criminal convictions often demonstrate that an individual does not possess such traits and therefore presents a risk to the public. Respondent's conviction involved dishonest conduct and therefore brings his suitability as a real estate salesperson into question.

The Department's guidelines (Cal. Code Regs., tit. 22, § 2911) provide criteria to assist in the difficult assessment of rehabilitation and consequent risk to the public safety. Measured against the criteria, evidence of rehabilitation is sufficient in this matter to justify issuance of a restricted salesperson license. Respondent's conviction was for a relatively minor misdemeanor; it has been over two years since the conviction; he has completed probation; restitution has been paid; his record has been expunged; he is significantly

involved in a community activity; and he has completed a course of formal education. In addition, Respondent testified in a forthcoming fashion that inspired confidence in his truthfulness.

It is concluded that the public interest will be sufficiently protected by the issuance of a restricted license.

ORDER

The application of Phong Thai Huynh for a real estate salesperson license is denied; 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:

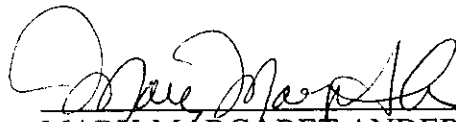
1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
 - a. The conviction of Respondent (including a plea of nolo 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 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 aspects of real estate, advanced real estate finance or 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.

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 5, 2005



MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
SEP 20 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

PHONG THAI HUYNH,

By Laurie G. Zi
Case No. H-8905 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, DECEMBER 2, 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 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: SEPTEMBER 20, 2004

DEPARTMENT OF REAL ESTATE

By David B. Seals
DAVID B. SEALS, Counsel

(17)

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
SEP • 1 2004

DEPARTMENT OF REAL ESTATE

By Lauree G. Zi

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 PHONG THAI HUYNH,)
13 Respondent.)

No. H-8905 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 PHONG THAI HUYNH (hereinafter "Respondent")
18 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 April 6, 2004 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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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 under other provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 17th day of August, 2004.