

FILED

MAY 6 2009

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By K. Mar

In the Matter of the Application of

THANH DINH TRAN,

Respondent.

NO. H-10578 SF

OAH NO. 2009010510

DECISION

The Proposed Decision dated March 27, 2009, 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 with the following exception:

Conditions "4" and "5" of the Order of the Proposed Decision is not adopted and shall not be part of the Decision.

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.

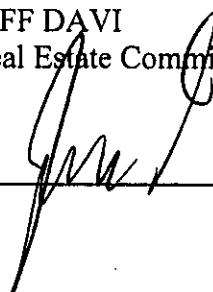
This Decision shall become effective at 12 o'clock noon on

MAY 27 2009

IT IS SO ORDERED

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JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

Case No. H-10578 SF

THANH DINH TRAN,

OAH No. 2009010510

Respondent.

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on March 4, 2009.

Richard K. Uno, Real Estate Counsel, represented complainant Joe M. Carrillo, Deputy Real Estate Commissioner, State of California.

Respondent Thanh Dinh Tran was present and represented himself.

The matter was submitted on March 4, 2009.

FACTUAL FINDINGS

1. Complainant Joe M. Carrillo, Deputy Real Estate Commissioner, issued the statement of issues in his official capacity.

2. Respondent Thanh Dinh Tran applied to the department for a real estate salesperson license on July 14, 2008.

3. On April 3, 1997, in the Municipal Court of California, County of Santa Clara, respondent was convicted of violating Vehicle Code section 23103, subdivision (a) ("wet reckless"), a misdemeanor. Imposition of sentence was suspended and respondent was placed on court probation for three years under terms and conditions that included payment of fines and fees.

Respondent's offense occurred on December 26, 1996. He drove after consuming alcohol and was stopped by the police.

In December 1997, respondent successfully completed the Drug Abuse Assistance Program at West Valley-Mission Community College. He no longer consumes alcohol.

4. On August 19, 1997, in the Superior Court of California, County of Santa Clara, case number 196338, respondent was convicted of violating Penal Code section 496 (receiving stolen property), a felony that is substantially related to the qualifications, functions and duties of a real estate licensee. Imposition of sentence was suspended and respondent was placed on formal probation for three years under terms and conditions that included serving eight months in county jail, with credit for three days served, and payment of fines and fees. Respondent complied with all requirements of his probation.

On January 24, 2008, the court granted respondent a record clearance pursuant to Penal Code section 1203.4.

5. On August 19, 1997, in the Superior Court of California, County of Santa Clara, case number 196339, respondent was convicted of violating Penal Code section 496 (receiving stolen property), a felony that is substantially related to the qualifications, functions and duties of a real estate licensee. Imposition of sentence was suspended and respondent was placed on formal probation for three years under terms and conditions that included serving eight months in county jail, with credit for two days served, and payment of fines and fees. Respondent complied with all requirements of his probation.

On January 24, 2008, the court granted respondent a record clearance pursuant to Penal Code section 1203.4.

6. The convictions set forth in Factual Findings 4 and 5 arose from two separate offenses in 1996. Respondent was involved in the purchase and resale of stolen electronics and computer parts.

7. Respondent takes responsibility for and is ashamed about his offenses. In the dozen years since his offenses respondent has rebuilt his life.

8. Respondent worked as the manager of an auto repair shop from 1998 to 2005. From 2006 to 2008, respondent worked as a loan processor for Global Equity Lending.

9. Respondent has a stable family life. He provides support and assistance to his ex-wife and children. His two children are students at the University of California, Davis. Respondent is divorced, but his ex-wife Michelle Hoang returned to live with him after she developed health problems. In a June 10, 2007 letter in support of respondent's petition for expungement of his August 1997 convictions, Hoang wrote that respondent is a good and caring person, a good father, honest, responsible and forgiving. Hoang also wrote that respondent helped her in emergencies despite their past differences.

10. Respondent has made numerous charitable contributions to the American Red Cross and the Saigon Reform Presbyterian Church to aid victims of natural disasters. He has also made donations to the Hoi Bac Ai Phanxico Franciscan Charity.

11. Respondent is a Catholic and attends church regularly. He teaches catechism classes at the church.

12. Respondent owns his home and several other properties. He has taken various real estate classes and seminars.

13. Luat Tong, Davis Huynh, Kevin Minh Le, Sandy Nguyen, Hans Ho, Nuong Nguyen, John Nguyen, and Vincent Le wrote letters in support of respondent. They attest to respondent's honesty, responsibility, helpfulness, generosity, dependability, and work skills and habits.

14. Following a hearing, the Real Estate Commissioner issued a decision that took effect on April 28, 1998, and denied respondent's prior application for a real estate salesperson license. The decision noted that respondent's convictions were at the time less than two years old, that respondent continued to be on probation, and that respondent had submitted no letters of reference.

15. Effective May 24, 2006, the Real Estate Commissioner denied another application by respondent for a real estate salesperson license. No hearing was held in that proceeding.

LEGAL CONCLUSIONS

1. Under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), the commissioner may deny the issuance of a license to an applicant who has been convicted of a felony or a crime involving moral turpitude that is substantially related to the qualifications, functions and duties of a real estate licensee.¹

2. It was not shown that respondent's 1997 "wet reckless" conviction (Factual Finding 3) involved moral turpitude. The conviction does not provide grounds to deny respondent's application for a real estate license.

3. Respondent's 1997 felony convictions (Factual Findings 4 and 5) are substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(4) (deceit and misrepresentation to achieve an end), and (a)(8) (unlawful act with intent of conferring a financial or economic benefit upon the perpetrator) and provide cause to deny his application.

4. The department's regulations set forth criteria for evaluating the rehabilitation of an applicant for a license. (Cal. Code Regs., tit. 10, § 2911.) Far more than two years

¹ Business and Professions Code section 10177, subdivision (b), was amended, effective January 1, 2008, to eliminate the moral turpitude requirement, but the pre-2008 version of the statute is applicable in this matter.

have passed since respondent's last conviction. He complied with the terms of his probation. He is no longer on probation. His felony convictions were expunged by court order. He has stability in his family life and provides support and assistance to his children and ex-wife. He has worked to advance himself through employment and education. He has demonstrated significant and conscientious involvement in church and charitable efforts. He has not had additional convictions. His own testimony and character letters from friends and associates demonstrate his positive change in attitude. It would not be against the public interest to permit respondent to hold a real estate salesperson license on a restricted basis.

ORDER

The application of respondent Thanh Dinh Tran for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

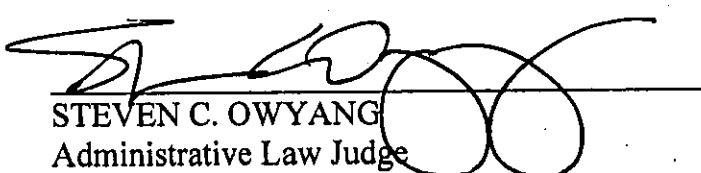
1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
 - a. The conviction of respondent (including a plea of nolo 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 Business and Professions Code section 10153.4, to wit: respondent shall, within 18 months of the issuance of the restricted license, submit evidence satisfactory to the commissioner of successful completion, at an accredited institution, of a course in real estate practices and one 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. This 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 Business and Professions Code 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.

Not adopted

DATED: March 27, 2009


STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

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FILED

JAN - 6 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

10 BEFORE THE DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Application of
14 THANH DINH TRAN,
Respondent.

) No. H-10578 SF
)
) STATEMENT OF ISSUES
)

15
16 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of
17 the State of California, for Statement of Issues against THANH DINH TRAN, also known as
18 "Steve Tran", (herein "Respondent"), alleges as follows:

19 1

20 Complainant makes this Statement of Issues in his official capacity.

21 2

22 On or about July 14, 2008, Respondent made application to the Department of
23 Real Estate of the State of California (herein "the Department") for a real estate salesperson
24 license.

25 3

26 On or about April 3, 1997, in the Municipal Court of the State of California,
27 County of Santa Clara, Case No. 9722697, Respondent was convicted of violating Section

1 23103(a) of the California Vehicle Code (Wet Reckless Driving), a misdemeanor and a crime
2 involving moral turpitude which bears a substantial relationship under Section 2910, Title 10,
3 California Code of Regulations, (herein "the Regulations"), to the qualifications, functions or
4 duties of a real estate licensee.

5 4

6 On or about August 19, 1997, in the Superior Court of the State of California,
7 County of Santa Clara, Case No. 196338, Respondent was convicted violating Section 496 of
8 the California Penal Code (Receiving Stolen Property), a felony and a crime which bears a
9 substantial relationship under Section 2910 of the Regulations to the qualifications, functions
10 or duties of a real estate licensee.

11 5

12 On or about August 19, 1997, in the Superior Court of the State of California,
13 County of Santa Clara, Case No. 196339, Respondent was convicted of violating Section 496
14 of the California Penal Code (Receiving Stolen Property), a felony and a crime which bears a
15 substantial relationship under Section 2910 of the Regulations to the qualifications, function or
16 duties of a real estate licensee.

17 6

18 Respondent's criminal convictions, as described in Paragraph 3 through 5, above,
19 constitute cause for denial of his application for a real estate license under Sections 10177(b)
20 and 480(a) of the Code.

21 PRIOR ADMINISTRATIVE PROCEEDINGS

22 7


23 Effective April 28, 1998, in Case No. H-7529 SF, before the Department, the
24 Real Estate Commissioner denied Respondent's application for a real estate salesperson license
25 pursuant to Sections 480(c) and 10177(a) of the Code.

26 ///

27 ///

Effective May 24, 2006, in Case No. H-9543 SF, before the Department, the Real Estate Commissioner denied Respondent's application for a real estate salesperson license pursuant to Sections 480(c) and 10177(a) of the Code.

WHEREFORE, 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 law.


JOE M. CARRILLO
Deputy Real Estate Commissioner

Dated at Sacramento, California,

this 6 day of January, 2009.