

FILED

OCT 14 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	Case No. H-10899 SF
RUSSELL TAI DINH,	)	
	)	OAH No. 2010041283
Respondent.	)	
_____	)	

DECISION

The Proposed Decision dated September 8, 2010, 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.

Pursuant to Section 11517(c)(2)(c) of the Government Code, the following correction is made:

Page 3, paragraph 1, under the Factual Findings of the Proposed Decision should be corrected in part to:

"9. Respondent's fiancée, LeeAnn Nguyen testified on his behalf. She has known respondent for..."

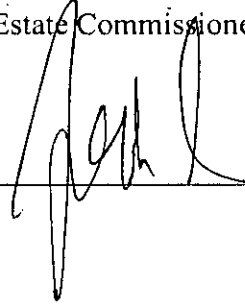
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime, but also grants the right to a restricted real estate salesperson license to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

NOV 03 2010 This Decision shall become effective at 12 o'clock noon on

IT IS ORDERED 10-11-2010

JEFF DAVI
Real Estate Commissioner

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

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

RUSSELL TAI DINH,

Respondent.

Case No. H-10899 SF

OAH No. 2010041283

PROPOSED DECISION

Administrative Law Judge Karen E. Reichmann, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 12, 2010.

John W. Barron, Real Estate Counsel, represented complainant.

Edgardo Gonzalez, Esq., represented respondent Russell Tai Dinh, who was present at the hearing.

This matter was submitted on August 12, 2010.

FACTUAL FINDINGS

1. Tricia D. Sommers made the accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent Russell Tai Dinh is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate salesperson.

3. On April 9, 2009, in the Superior Court of California, County of Alameda, respondent was convicted of violating Vehicle Code section 2800.1 (evading a police officer), a misdemeanor. The facts and circumstances of the offense indicate that the conduct threatened to cause substantial injury to the person or property of another.

Respondent was driving on the freeway early in the morning of March 10, 2008, when a California Highway Patrol Officer approached him from behind and signaled for him to stop. Instead of pulling over, respondent accelerated in an attempt to evade the officer. Respondent drove for several miles at an excessive rate of speed before exiting the freeway, parking his car, and surrendering. Respondent's speed reached at least 120 miles per hour. At least one other car was on the freeway during the incident. By driving at such an

excessive rate of speed, respondent created a risk of substantial injury to himself, the pursuing police officer, and the other motorist.

Respondent was sentenced to three years probation, on terms and conditions that included serving 90 days in county jail. Respondent was permitted to serve his jail time on weekends and was credited time for good behavior. Respondent has completed his jail time and has paid all fines. His driver's license was suspended for one year and has been reinstated. Respondent remains on probation.

4. Respondent has no other convictions.

5. Respondent expressed remorse for his conduct. He testified as follows:

He had been undergoing personal and financial stress at the time of the incident. He had been exceeding the speed limit by a small margin when the officer signaled for him to pull over. He felt unfairly picked on and he panicked. Instead of pulling over, he sped up and kept accelerating. After a few minutes, he came to his senses and pulled over and surrendered. He feels lucky that no one was injured and no damage was caused. He thinks about the incident every day and is distressed by the thought that he endangered himself, the police officer, and the public, and could have caused tremendous loss and suffering. His conduct was out of character. This incident is the biggest mistake he has made in his life and he is determined that it will never happen again. He realizes that the police officer was doing his job and was not picking on him. He feels guilty about the incident and has had nightmares about it. He is ashamed by the incident and embarrassed to tell people about it.

6. He did not tell his employing broker about his conviction for almost a year. He testified that he failed to do so because of his embarrassment about the incident.

7. Respondent is 32 years old. He is a graduate of San Jose State University. Respondent has been licensed as a real estate salesperson since 2007. He is employed by Intero Real Estate Services. Respondent started working for Intero's Cupertino branch in 2007. He moved to the Fremont branch in May, 2008.

8. Rishi Bakshi, the managing broker of the Fremont branch, testified on respondent's behalf. Bakshi has worked with respondent for two years. Bakshi sees respondent two to three times a week and supervises his real estate transactions. There have been no complaints against respondent. Bakshi testified that respondent is honest, professional, pleasant to work with, and serious about his career in real estate. Respondent notified Bakshi about his conviction in April, 2010, around the same time that the accusation in this matter was issued. Bakshi was surprised to learn of respondent's conviction, but believes that respondent is truly remorseful for his conduct. Bakshi believes that respondent has learned from his mistake and will not engage in such conduct again. Bakshi believes that respondent should be allowed to retain his license because the conviction was a personal mistake that did not relate to his real estate practice. Bakshi is willing to supervise respondent should his license be restricted. He has supervised restricted licensees before.

9. Respondent's fiancée, LeeAnn Nguyen testified on his behalf. She has known respondent for six years. They have been dating for the past two years. They live together. She is a college student and respondent provides all the financial support for their household. She stated that respondent was undergoing personal stress at the time he committed the offense and that the conduct was not typical of respondent's character. She described respondent as honest, caring, loving, and a person of integrity who helps others. Respondent thinks about the incident everyday and has become a better person because of it. Nguyen and respondent volunteer at the Salvation Army every weekend throughout the holiday season and at their Buddhist temple twice a year.

10. Letters were submitted on respondent's behalf by Kirstin Carlos and Bryan Le. Carlos, a colleague of respondent's at Intero, stated that respondent is a dedicated and honest professional. She has only heard positive comments about him from his colleagues and clients. Carlos is aware of respondent's conviction and believes that he deserves a second chance. Le has known respondent as a personal acquaintance since they went to college together. Le stated that respondent is honest and hard-working and puts other people's needs ahead of his own. Le believes that respondent has learned from his mistake and has fully rehabilitated. Le plans on purchasing a home with respondent's assistance in the near future.

11. Respondent voluntarily enrolled in an online real estate ethics course in July, 2010 in order to better serve his clients. Respondent is willing to accept a restricted license. His focus as a real estate salesperson is making his clients happy by putting their needs first.

12. Respondent submitted a conviction detail report to the Department of Real Estate on February 3, 2010. Respondent did not mention the excessive rate of speed he reached while evading the police officer and did not check off the box indicating that he was on probation. Respondent testified credibly that these omissions were an oversight and that he was not trying to minimize his conduct.

13. Respondent has had no prior discipline involving his real estate practice.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), and section 490 authorize the Real Estate Commissioner to discipline a licensee who is convicted of an offense which is substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent's conviction for evading a police officer is substantially related to the qualifications, functions, or duties of a real estate licensee because the underlying conduct threatened to cause substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Therefore, cause exists to suspend or revoke respondent's real estate license by reason of the matters set forth in Finding 3.

2. In California Code of Regulations, title 10, section 2912, the Department has established criteria to be used in evaluating the rehabilitation of a licensee who has

committed a criminal offense. Respondent is still on probation for this relatively recent offense. Furthermore, respondent failed to notify his employing broker of the incident in a timely manner. As evidence of rehabilitation, respondent has completed the jail portion of his sentence, has complied with the terms of probation and has paid all fines. In addition, respondent voluntarily enrolled in a real estate ethics course. Respondent participates in volunteer activities. Respondent testified sincerely regarding his remorse for his behavior and determination never to engage in such conduct again. The conviction appears to be an isolated incident, atypical of respondent's character. Accordingly, respondent has presented sufficient evidence of rehabilitation to warrant remaining licensed as a real estate salesperson, on a restricted basis.

ORDER

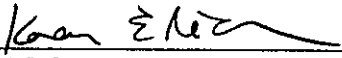
All licenses and licensing rights of respondent Russell Tai Dinh under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: 9-8-2010


KAREN E. REICHMANN
Administrative Law Judge
Office of Administrative Hearings

1 JOHN W. BARRON, Counsel (SBN 171246)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0792

FILED

APR - 7 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 ***

11 In the Matter of the Accusation of)
12) No. H-10899 SF
13 RUSSELL TAI DINH,)
14 Respondent.)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)

16 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
17 of the State of California, for cause of Accusation against RUSSELL TAI DINH, (hereinafter
18 "Respondent"), is informed and alleges as follows:

19 1

20 The Complainant makes this Accusation in her official capacity.

21 2

22 Respondent is presently licensed and/or has license rights under the Real Estate
23 Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "the Code") as a
24 real estate salesperson.

25 3

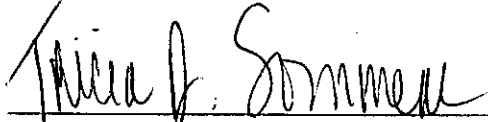
26 On or about April 9, 2009, in the Superior Court of the State of California,
27 County of Alameda, Case No. 126688, Respondent was convicted of violating Section 2800.1

1 of the California Vehicle Code (Evading Police Officer), a misdemeanor and a crime which
2 bears a substantial relationship under Section 2910, Title 10, California Code of Regulations,
3 to the qualifications, functions or duties of a real estate licensee.

4 4

5 The facts alleged in Paragraph 3, above, constitute a cause under Sections 490
6 (Conviction of Crime) and 10177(b) (Conviction of Crime Substantially Related to
7 Qualifications, Functions or Duties of Real Estate Licensee) of the Code for suspension or
8 revocation of all licenses and license rights of Respondent under the Real Estate Law.

9 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
10 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
11 action against all licenses and license rights of Respondent under the Code, and for such other
12 and further relief as may be proper under the provisions of law.

13 
14 TRICIA D. SOMMERS
15 Deputy Real Estate Commissioner

16 Dated at Sacramento, California,
17 this 6th day of April, 2010.