

FILED

APR 20 2012

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By R. Jones

* * *

In the Matter of the Accusation of)
CAN NGOC NGUYEN,) CASE NO. H-11214 SF
Respondents.) OAH NO. 2011110144
_____)

DECISION

The Proposed Decision dated March 20, 2012, 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 Decision suspends or revokes the real estate license and/or license rights.

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.

This Decision shall become effective at 12 o'clock noon on MAY 10 2012

IT IS SO ORDERED April 20, 2012

REAL ESTATE COMMISSIONER

By: William E. Moran

By WILLIAM E. MORAN
Assistant Commissioner, Enforcement

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Of:

CAN NGOC NGUYEN,

Respondent.

Case No. H-11214 SF

OAH No. 2011110144

PROPOSED DECISION

Administrative Law Judge Karen E. Reichmann, State of California, Office of Administrative Hearings, heard this matter on February 29, 2012, in Oakland, California.

Richard K. Uno, Real Estate Counsel, represented complainant.

Respondent Can Ngoc Nguyen was represented by Kirk Elliott, Esq. Respondent did not appear at the hearing.

This matter was submitted for decision on February 29, 2012.

FACTUAL FINDINGS

1. Complainant E. J. Haberer II made the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent Can Ngoc Nguyen 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 broker.

3. On April 26, 2011, respondent was convicted in the Superior Court of California, County of Santa Clara, on his plea of nolo contendere, of two violations of Penal Code section 530.5, subdivision (a) (using personal identification without authorization), and one violation of Penal Code section 484e, subdivision (d) (acquiring access card information with fraudulent intent), all felonies. Respondent was sentenced to three years' formal probation, on terms and conditions which included serving seven months in county jail. The court records reflect that respondent paid \$62,080 towards restitution prior to his sentencing.

The facts and circumstances of the offenses are that respondent opened credit card accounts using personal identification of his former brother-in-law and of his friend.

4. On February 27, 2012, respondent filed a motion in the Superior Court in which he asks the court to reduce the offenses to misdemeanors, terminate probation, and expunge the offenses. The motion is scheduled to be heard on March 29, 2012.

5. In a letter dated February 22, 2012, Tony Dinh, a licensed real estate broker and president of Novia Realty and Financial, Inc. ,DBA Century 21 A-1 Network, writes that he has worked closely with respondent for 10 years. Dinh describes respondent as hard-working, responsible, cooperative, honest and efficient. It is unclear whether Dinh is aware of respondent's convictions.

6. In an undated letter, Rick B. Santos, General Sales Manager of Putnam Lexus, writes that respondent assisted him in his purchase of a home in October 2009. He describes respondent as professional, caring, organized and reliable. It is unclear whether Santos is aware of respondent's convictions.

7. Respondent has been licensed by the Department since 2002. There have been no other disciplinary proceedings against respondent.

LEGAL CONCLUSIONS

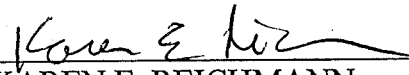
1. Business and Professions Code section 10177, subdivision (b), and section 490 authorize the Real Estate Commissioner to discipline a licensee who is convicted of an offense which is substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent's convictions for using personal identification without authorization and acquiring access card information with fraudulent intent are substantially related to the qualifications, functions, or duties of a real estate licensee because the crimes involved the fraudulent taking of funds, the employment of fraud, deceit, falsehood or misrepresentation to achieve an end, and an unlawful act done with the intent of conferring a financial benefit upon respondent. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(1), (4), & (8).) Therefore, cause exists to suspend or revoke respondent's 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. Fewer than two years have passed since respondent's conviction. Respondent remains on probation for the offenses. Respondent's three felony offenses involved fraud against his former brother-in-law and against a friend for personal gain. His conduct raises serious concerns about honesty and integrity and his fitness to serve as a fiduciary. Respondent presented little evidence of rehabilitation. In light of the severity of his conduct, it would be against the public interest to allow respondent to remain licensed, even on a restricted basis.

ORDER

All licenses and licensing rights of respondent Can Ngoc Nguyen under the Real Estate Law are revoked.

DATED: 3/20/2012


KAREN E. REICHMANN
Administrative Law Judge
Office of Administrative Hearings