

FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

December 6, 2012

DEPARTMENT OF REAL ESTATE

By



In the Matter of the Accusation of

CORLIANCE PROPERTIES & FINANCIAL
GROUP CORP., FRANCIS NGUYEN,
DAVID NGUYEN and CONG CHI NGUYEN,

Respondents.

CASE NO. H-11259 SF

OAH NO. 2012010694

DECISION

The Corrected Proposed Decision dated October 30, 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.

This Decision shall become effective at 12 o'clock noon on December 26, 2012.

IT IS SO ORDERED 12/3/2012.

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CORLIANCE PROPERTIES &
FINANCIAL GROUP CORP., FRANCIS
NGUYEN, DAVID NGUYEN and CONG
CHI NGUYEN,

Respondents.

Case No. H-11259 SF

OAH No. 2012010694

ORDER CORRECTING PROPOSED
DECISION

On October 23, 2012, Administrative Law Judge Adrienne J. Miller of the Office of Administrative Hearings issued a proposed decision in the above-captioned case. On October 30, 2012, Richard K. Uno, Counsel, Department of Real Estate, filed an application to correct a mistake in the proposed decision. No opposition to the application was filed.

In the order of her proposed decision, Judge Miller authorizes respondent Corliance Properties & Financial Group to buy down each day of a 60 day suspension by paying \$100 per day. The last sentence of the first paragraph of the order further provides, "Payment shall be made by certified check within 30 days of the effective date of this decision." It should state, "Payment shall be made by certified check prior to the effective date of the Decision." Correction of that error is authorized by law. (Cal. Code Regs., tit. 1, § 1048.)

GOOD CAUSE appearing, the following order is issued:

1. The last sentence of the first paragraph of the order of the proposed decision is corrected to read, "Payment shall be made by certified check prior to the effective date of the Decision."
2. A corrected proposed decision incorporating this change is attached to this order.
3. This order and the agency's application (with attachments) are hereby made part of the record in this case.

DATED: October 30, 2012


CHERYL R. TOMPKIN
Presiding Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

CORLIANCE PROPERTIES &
FINANCIAL GROUP CORP.,
FRANCIS NGUYEN,
DAVID NGUYEN and
CONG CHI NGUYEN,

Respondents.

Case No. H-11259 SF

OAH No. 2012010694

CORRECTED PROPOSED DECISION

Administrative Law Judge Adrienne J. Miller, State of California, Office of Administrative Hearings, heard this matter on October 1, 2012, in Oakland, California.

Department of Real Estate Counsel Richard K. Uno represented complainant E. J. Haberer II, Deputy Real Estate Commissioner, State of California.

Bao-Quan P. Pham, attorney at law, represented respondents Corliance Properties & Financial Group Corp., Francis Nguyen, and David Nguyen. Respondent Cong Chi Nguyen was present and was self-represented.

The matter was submitted on October 1, 2012.

FACTUAL FINDINGS

1. Complainant E. J. Haberer, II filed the Accusation in his official capacity as a deputy real estate commissioner for the Department of Real Estate (Department).

License History and Background

2. Respondent Corliance Properties & Financial Group Corp., (hereinafter Corliance), is presently licensed and /or has corporation license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code. The corporation license was originally issued on November 29, 2005, and will expire on November 28, 2013.

3. Respondent Francis Nguyen (hereinafter Francis N.)¹ is currently 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. Respondent's broker's license expires on May 16, 2015. Respondent is also licensed as the designated broker/officer of Corliance. Respondent's designated broker/officer license expires on November 28, 2013. As the designated officer/broker of Corliance, Francis N. is responsible for supervising the activities of Corliance officers, agents, real estate licensees and employees for which a license is required. (Bus. & Prof. Code, § 10159.2, subd. (a).)

4. Respondent David Nguyen (hereinafter David N.) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a salesperson. Respondent's license expires on November 20, 2013. He is employed by Corliance and is the Operations Manager/Realtor for Corliance.

5. Respondent Cong Chi Nguyen (hereinafter Cong N.) was licensed as a real estate salesperson, but his license expired on August 27, 2010. A conditional suspension pursuant to Business and Professions Code section 10153.4, subdivision (c) was found in the Department's records as of December 12, 2011. Cong N. was employed by Corliance until August 27, 2010.

6. Helene Tran (not a respondent) is the President/Loan Officer for Corliance. She applied for a real estate salesperson's license on June 5, 2006. Her application was denied on February 13, 2008. Tran's application was denied because she knowingly made false statements of fact on her application and she was convicted of two crimes substantially related to the qualifications, functions or duties of a real estate salesperson: petty theft and welfare fraud, both misdemeanors and both crimes involving moral turpitude. Helene Tran is married to respondent David N.

7. At all times mentioned herein, respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Business and Professions Code section 10131, subdivision (a), including the operation and conduct of a residential resale brokerage wherein respondents bought, sold, or offered to buy or sell, solicited or obtained listings of, and negotiated the purchase, sale or exchange of real property or business opportunities, all for or in expectation of compensation.

¹ Respondents, Francis Nguyen, David Nguyen and Cong Chi Nguyen, all share the same last name; however, none are related to each other. Each respondent will be distinguished by using their first name and the initial "N" for Nguyen, their last name.

First Cause of Action –False Representations to Buyers

8. In October 2009, Son Nguyen (hereinafter Son N.), and his father, Hong Nguyen (hereinafter Hong N.)² (Buyers) contacted respondent Cong N. to have him represent them in their efforts to purchase a residence located at 1754 King Road, San Jose, California (King Road Property). Cong N., acting on behalf of Corliance, agreed to provide real estate services to purchase the King Road Property.

9. On August 27, 2010, Cong N. contacted Hong N. to set up a meeting at his home at noon. At this meeting, Cong N. told Hong N. that escrow was to close that day at 3:00 p.m. After this meeting, at 1:00 p.m., Cong N. called Hong N. and told him that there was another document that needed to be signed before going to escrow. Cong N. went back to Hong N.'s house with a document dated April 19, 2010. The document stated that Son N. had to pay \$6,700 in cash to Helene Tran. The document stated that once it was signed the buyers would recognize Helene Tran, as "the principal in the obtaining of a mortgage loan" for the King Road Property, and that they agreed to pay her for her "financial consulting" services and also hold her "harmless" from any liability associated with "obtaining the service." Neither, Hong N. nor Son N. had ever met Helene Tran or spoken to her prior to this request for a fee for her services. Hong N. asked Cong N. to explain what the fee was for and Cong N. told Hong N. that the fee was something that everyone pays for "processing fees and desk fees."

10. Hong N. did not want to pay the fee but was afraid that the sale of the King Road Property would fall through if he did not pay. Hong N. did not sign the document.

11. Hong N. contacted Helene Tran by phone on August 27, 2010, and she repeated what Cong N. and told him earlier. Hong N. was not satisfied with Helene Tran's or Cong N.'s explanation regarding the additional fee.

12. While driving to the bank to get the cashier's check for the down payment for escrow, respondent David N. called Hong N. on his cell phone. David N. introduced himself as the manager of Corliance and he told Hong N. that he had to pay the \$6,700 fee or he would not be able to purchase the house. After further discussion, it was agreed that Hong N. would meet respondent Cong N. at the escrow office and would give him the cashier's check for \$6,700 for Helene Tran, but that she was not to cash it until the buyers had the keys to the property and escrow had closed. Neither Son N. nor Hong H. had ever spoken to David N. before this phone call. At the bank, Hong N. obtained not only a cashier's check for the down payment for the house in the amount of \$67,558.40, payable to Old Republic Title Company, but he also obtained a cashier's check in the amount of \$6,700, made payable to Helene Tran.

2 Buyers, Son Nguyen and Hong Nguyen, share the same last name of the respondents, Francis Nguyen, David Nguyen and Cong Chi Nguyen, however they are not related to the respondents. Each buyer will be distinguished by using their first name and the initial "N" for Nguyen, their last name.

13. Cong N. met Hong N. and Son N. at the escrow office and Hong N. gave Cong N. the cashier's check for \$6,700. On August 27, 2010, Son N. signed all the escrow documents, including the Department of Housing and Urban Development (HUD) Statement. Several days later, Son N. and Hong N. reviewed the HUD Statement more closely and noticed that the \$6,700 fee to Helene Tran was not listed in the HUD Statement.

14. Son N. called the escrow office and spoke with the escrow officer, to ask why the \$6,700 fee to Helene Tran was not on the HUD Statement. The escrow officer told Son N. that she knew nothing about any such fee.

15. On September 10, 2010, Son N. sent an email to both Helene Tran and David N. asking about the \$6,700 fee. Neither Helene Tran nor David N. replied to Son N.'s email. On the following day, Cong N. contacted Son N. and once again tried to explain the fee as a "processing fee" and said if they needed further details they should contact David N. A few days later Son N. sent another email to both Helene Tran and David N. David N. replied suggesting that they all meet at the Corliance office because he did not want to discuss "confidential client information over email."

16. Son N. and Hong N. decided not to meet at the Corliance office because they felt that nothing would be resolved and they felt they had been tricked into paying Helene Tran the \$6,700 fee.

17. On October 27, 2010, Son N. filed his complaint with the Department.

18. David N. never spoke to Son N., before, during or after the purchase of the King Road Property, and he only spoke to Hong N. on the day that escrow closed. David N. prepared the fee agreement for \$6,700 and he gave it to Cong N. to give to the buyers. The fee agreement was given to the buyers twice, once in December 2009, and again in April or May 2010. David N. told the buyers that Helene Tran had to pay a loan processor and that was the reason for the fee agreement. During the hearing David N. admitted it was a mistake not to have this agreement reflected in the escrow documents, but he did not admit that the \$6,700 fee was fraudulent and against Real Estate law. He offered Hong N. a refund of \$6,700, but Hong N. refused.

19. Cong N. only received \$1,000 from the \$6,700 fee paid to Helene Tran. There was no signed written agreement for the fee. Cong N. did not believe it was necessary to have a signed written agreement, because he thought Hong N. was a "family friend." Cong N. told Hong N. that the fee was for "processing fees and desk fees" and that if Hong N. had any questions he should speak to Helene Tran or David N. for further explanation of the fee. This was Cong N.'s second real estate transaction. He no longer is a real estate salesperson. Cong N. did not provide any evidence that he was aware that this fee was fraudulent and against Real Estate law.

20. Francis N. never spoke to either Hong N. or Son N. He found out about the \$6,700 fee agreement after the complaint was filed. He admitted that he only signs the final documents when a transaction is completed. Francis N. has been licensed for nine years and this is his first disciplinary action. There was no evidence that Francis N. knew about the fee prior to the complaint being filed.

21. Helene Tran processes loan applications by gathering information and documents from buyers. She helps buyers find a lender. She never spoke to Son N. and only spoke to Hong N. She did not remember when she first spoke to Hong N. about the \$6,700 fee, but her testimony was that she did speak to him and explained that the fee was a "loan-processing fee." Her testimony established that the loan had to be processed twice because the first time there were problems with the sellers and the loan expired. She asked David N. to talk to Hong N. and explain the \$6,700 fee because Hong N. refused to pay the \$6,700. She believes that she does not need a license to submit loan applications. She no longer has her file for processing the loan for this property because it was lost when Corliance offices were moved. She has no documents regarding the loan processing for this property. Helene Tran's credibility is questionable.

22. Hong N.'s testimony established that he never agreed to a "bonus" to be paid to either Cong N. or Helene Tran for processing a loan on this property. No one ever told Hong N. that the first loan for the property had expired. He never agreed to pay \$6,700 for "processing fees" or "desk fees." He refused a refund for the paid \$6,700 because he felt that it was more important to file a complaint with the Department and have the respondents held responsible and disciplined for illegal and dishonest real estate business practices. He does not want other people to suffer the same experience he and his son, Son N. suffered.

23. Son N. never received a satisfactory answer to why his father had to pay the \$6,700 fee. Son N. was never told there were any problems with obtaining financing for the property. He was never told that there would be an additional cost for obtaining financing for the property. Son N. never spoke to or met with Helene Tran prior to the day that escrow closed on the property. Son N. only dealt with Cong N. He gave Cong N. his tax returns and loan documents for the loan application, but never spoke to anyone else at Corliance regarding the purchase of this property. Son N. and his father Hong N. were victims of substantial misrepresentation, fraud and dishonest dealing regarding the \$6,700 fee. Son N. does not want anyone else to fall victim to the illegal business practices of the respondents.

24. On March 14, 2011, the Department's senior deputy investigator interviewed Francis N. and David N. Francis N. brought the transaction file for the King Road Property to the interview. The file disclosed that the transaction was a short sale that lasted nearly a year. Hong N. lived next door to the property and contacted the listing agent and told him that his son, Son N. wanted to buy the property. The remainder of the investigator's testimony confirmed the matters as set forth in the Factual Findings 18 through 21.

Second Cause of Action—Failure to Supervise

25. As the designated officer/broker of Corliance, Francis N. failed to exercise reasonable supervision and control over the activities of Corliance and respondents Cong N. and David N., and other employees of Corliance, thereby allowing the acts perpetrated against the respondents. He also failed to ensure full compliance with the Real Estate Law.

LEGAL CONCLUSIONS

First Cause of Action—False Representations to Buyers

1. Cause for disciplinary action against respondents, David Nguyen and Cong Chi Nguyen, exists pursuant to Business and Professions Code section 10176, subdivision (a) (making any substantial misrepresentation) by reason of the matters set forth in Factual Findings 9, 12, and 15, in that respondents made representations to Buyers that they knew were false when they made those representations. The respondents intended to charge Buyers an additional \$6,700 to benefit themselves without performing any services and made these representations to fraudulently induce Buyers to pay them \$6,700.

2. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code sections 10176, subdivision (i) (fraud or dishonest dealing) in conjunction with section and 10177, subdivision (d) (willful disregard or violation of real estate law) and 10177, subdivision (g) (negligence or incompetence of real estate licensee).

Second Cause of Action—Failure to Supervise

3. Cause for disciplinary action against respondents Corliance Properties & Financial Group, Corp. and Francis Nguyen, exists pursuant to Business and Professions Code section 10159.2 (responsibility of directing officer) and under California Code of Regulations, title 10, 2725 (broker supervision), by reason of the matters set forth in Factual Findings 18 and 20.

4. Cause for disciplinary action against respondent Francis Nguyen, exists pursuant to Business and Professions Code section 10177, subdivision (d) (willful disregard or violation of real estate law), by reason of the matters set forth in Factual Findings 18 and 20.

ORDER

Corliance Properties & Financial Group Corp., and Francis Nguyen

All licenses and licensing rights of respondent Corliance Properties & Financial Group Corp., and respondent Francis Nguyen under the Real Estate Law are suspended for

60 days. Respondent may buy down each day of suspension by paying \$100 per day to the Department. Payment shall be made by certified check prior to the effective date of the Decision.

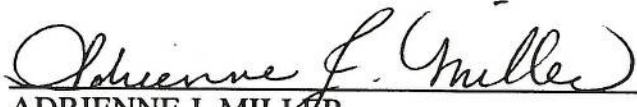
David Nguyen

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

Cong Chi Nguyen

All licenses and licensing rights of respondent Cong Chi Nguyen under the Real Estate Law are revoked

DATED: 10-30-12


ADRIENNE J. MILLER
Administrative Law Judge
Office of Administrative Hearings