

**FILED**

MAR 12 2009

DEPARTMENT OF REAL ESTATE

By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of

KAN CHAN YAO,

Respondent.

No. H-27870 LA

ORDER DENYING REINSTATEMENT OF LICENSE AND  
GRANTING RIGHT TO A RESTRICTED LICENSE

On October 26, 1998, in Case No. H-27870 LA, a Decision was rendered accepting the voluntary surrender of Respondent's real estate broker license.

On January 27, 2008, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real estate broker license.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and

1 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the  
2 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

3 The Department has developed criteria in Section 2911 of Title 10, California  
4 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for  
5 reinstatement of a license. Among the criteria relevant in this proceeding are:

6 Regulation 2911(a) The passage of not less than two years since the most recent  
7 criminal conviction or act of the applicant that is a basis to deny the departmental action sought.  
8 (A longer period will be required if there is a history of acts or conduct substantially related to  
9 the qualifications, functions or duties of a licensee of the department.)

10 On March 29, 1999, in the United States District Court, Central District of  
11 California, Respondent was convicted of Causing Bank Fraud in violation of Title 18 United  
12 States Code Sections 1344 and 2(b), a felony and a crime involving moral turpitude that is  
13 substantially related to the qualifications, functions and duties of a real estate licensee.  
14 Respondent, then working as a loan agent, fraudulently induced a bank to loan \$1.7 million to  
15 finance the purchase of a motel-restaurant-gas station property by concealing the true purchase  
16 price, \$1,050,000, and Respondent's participation in the purchase. Respondent was placed on 60  
17 months probation, on terms including 2 months home detention, community service, and \$900  
18 restitution. Respondent was prohibited from management of any employers' funds and access to  
19 consumer credit information.

20 Regulation 2911(b) Restitution to any person who has suffered monetary losses  
21 through "substantially related" acts or omissions of the applicant.

22 A \$34,000 judgment against Respondent in the Bankruptcy Court for the Central  
23 District of California in favor of victim Tran National Bank has been satisfied.

24 Regulation 2911(c) Expungement of criminal convictions resulting from immoral  
25 or antisocial acts.

26 The conviction is not subject to expungement.

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1                   Regulation 2911(g) Payment of the fine or other monetary penalty imposed in  
2 connection with a criminal conviction or quasi-criminal judgment.

3                   Satisfaction of monetary imposition was filed September 1, 1999.

4                   Regulation 2911(h) Stability of family life and fulfillment of parental and familial  
5 responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency  
6 action sought.

7                   Respondent states he is current on child support payments due to the mother of his  
8 teenage daughter.

9                   Given the violations found and the fact that Respondent has not engaged as a  
10 broker in the operation of a real estate brokerage business or otherwise acted in a fiduciary  
11 capacity, Respondent has not established that he has complied with Section 2911(k), Title 10,  
12 California Code of Regulations. Consequently, I am not satisfied that Respondent is sufficiently  
13 rehabilitated to receive an unrestricted real estate broker license. Additional time and evidence  
14 of correction as a restricted real estate broker is necessary to establish that Respondent is  
15 rehabilitated.

16                  I am satisfied, therefore, that it will not be against the public interest to issue a  
17 restricted real estate broker license to Respondent.

18                  NOW, THEREFORE, IT IS ORDERED that Respondent's petition for  
19 reinstatement of his real estate broker license is denied.

20                  A restricted real estate broker license shall be issued to Respondent pursuant to  
21 Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following  
22 conditions prior to and as a condition of obtaining a restricted real estate broker license within  
23 nine (9) months from the date of this Order:

- 24                   1. Respondent shall take and pass the real estate broker license examination.  
25                   2. Submittal of a completed application and payment of the fee for a real estate  
26 broker license.

27                  ///

1                   The restricted license issued to Respondent shall be subject to all of the provisions  
2 of Section 10156.7 of the Business and Professions Code and to the following limitations,  
3 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

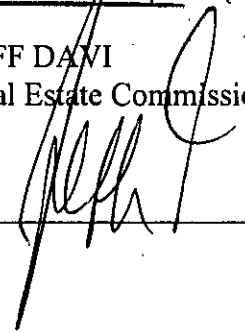
4                   A. The restricted license issued to Respondent may be suspended prior to hearing  
5 by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of  
6 nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a  
7 real estate licensee.

8                   B. The restricted license issued to Respondent may be suspended prior to hearing  
9 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that  
10 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands  
11 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted  
12 license.

13                   C. Respondent shall not be eligible to apply for the issuance of an unrestricted  
14 real estate license nor the removal of any of the limitations, conditions or restrictions of a  
15 restricted license until two (2) years have elapsed from the date of the issuance of the restricted  
16 license to respondent.

17                   This Order shall become effective at 12 o'clock noon on APR 01 2009

18                   IT IS SO ORDERED

19                   JEFF DAVIS  
20                   Real Estate Commissioner  
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FILED  
NOV 02 1998  
DEPARTMENT OF REAL ESTATE

By [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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|----------------------|---|------------------|
| In the Matter of the | ) |                  |
| Investigation of:    | ) |                  |
| KAN CHAN YAO,        | ) | H-27870 LA       |
| Respondent           | ) | NO. 198-0331-002 |

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On April 7, 1998, an investigation was opened by the Department of Real Estate in this matter against Respondent KAN CHAN YAO.

By Declaration signed Septmeber 10, 1998, Respondent petitioned the Commissioner to voluntarily surrender his real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent KAN CHAN YAO'S  
petition for voluntary surrender of his real estate broker license  
is accepted as of the effective date of this Order as set forth  
below, based upon the understanding and agreement expressed

1 Respondent's Declaration dated September 10, 1998  
2 (attached as Exhibit "A" hereto).

3 IT IS ALSO ORDERED that Respondent's license  
4 certificate(s), pocket card(s) and all branch office license  
5 certificates be sent to the below-listed address so that they  
6 reach the Department on or before the effective date of the Order:

7 Department of Real  
8 Attn: Licensing Flag Section  
9 P.O. Box 187000  
Sacramento, California 95818-7000

10 This Order shall become effective at 12 o'clock noon  
11 on NOV 23 1998.

12 DATED: 10/26/98.

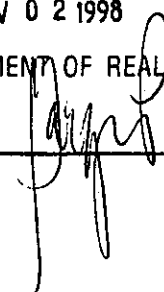
13 JIM ANTT, JR.  
14 Real Estate Commissioner

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**FILED**  
NOV 02 1998

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the matter of the )  
Investigation of: ) No. 198-0331-002  
Kan Chan Yao, )  
 )  
\_\_\_\_\_  
Respondent. )

**DECLARATION**

My name is Kan Chan Yao.

I am the Respondent in the above-entitled investigation. I am representing myself in this matter.

I wish to voluntarily surrender my real estate broker license(s) issued by the Department, pursuant to Business and Professions Code Section 10100.2.

I understand that by so voluntarily surrendering my real estate license(s), I agree to the following:

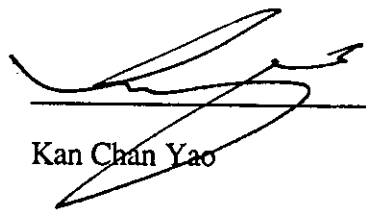
The filing of this declaration as my petition for voluntary surrender shall be deemed to be an understanding and agreement by me that, upon acceptance by the Commissioner, all affidavits and all relevant evidence obtained by the Department in

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the investigation in Case No. 198-0331-002 prior to the Commissioner's acceptance, may be considered by the Department for the purpose of deciding whether or not to grant reinstatement of my license pursuant to Business and Professions Code Section 11522.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: 9-10-98

  
\_\_\_\_\_  
Kan Chan Yao