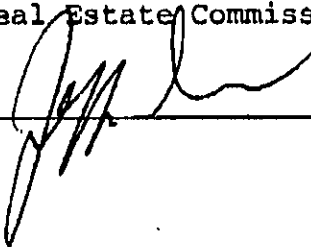


This Decision shall become effective at 12 o'clock
noon on October 10, 2007.

IT IS SO ORDERED 9-19-07

JEFF DAVI
Real Estate Commissioner



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

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

HAI LE,

Respondent.

Case No. H-33947 LA

OAH No. L2007060197

PROPOSED DECISION

Robert S. Eisman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on August 1, 2007.

Cheryl D. Keily, Real Estate Counsel, represented Deputy Real Estate Commissioner Janice Waddell (complainant).

Hai Le (respondent) represented himself.

Based on an unopposed request by counsel for complainant, the administrative law judge amended the first line of text under Section II on page 2 of the statement of issues so that it now reads as follows: "On or about April 19, 1990, in the Superior Court of."

At the request of the parties, the record was held open until August 8, 2007, to allow respondent to file and serve a signed copy of a letter that he offered in evidence. Said letter was filed on or before August 8, and was received in evidence as respondent's Exhibit B.

The matter was submitted on August 8, 2007.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues while acting in her official capacity.
2. On or about April 7, 2006, the Department of Real Estate (department) received a salesperson license application from respondent. Any license issued as a result

of such application would be subject to the conditions of Business and Professions Code section 10153.4.

3. Part D of the license application asked respondent to provide background information about any past license denials or discipline, and any past convictions or charges currently pending against respondent. Item 2 of Part D asked the following question: "Have you ever been convicted of any violation of law? Convictions expunged under Penal Code section 1203.4 must be disclosed. However, you may omit minor traffic citations which do not constitute a misdemeanor or felony offense." Respondent marked the box indicating a "No" response.

Item 4 of Part D instructed respondent to provide a detailed explanation of each conviction, including "whether each conviction was a misdemeanor or felony at the time the conviction occurred" and "if the conviction status has been subsequently changed or reduced" and to note that fact in the area provided for additional information. Respondent left item 4 blank.

On April 4, 2006, respondent signed the application, certifying under penalty of perjury that the answers he had given in the application were true and correct to the best of his knowledge.

3. The department denied respondent's application. Respondent appealed the denial of his license application and this hearing ensued.

4. On April 3, 1990, in the Municipal Court of San Fernando Courthouse Judicial District, County of Los Angeles, in Case No. PA002467, *People v. Hai Thanh Le*, the court convicted respondent on a plea of guilty of violating Penal Code section 487.1, grand theft of property, a felony offense.

On April 19, 1990, the court suspended imposition of sentence pursuant to a negotiated disposition and placed respondent on probation for a period of 48 months on terms and conditions, including that he make restitution, if any, to victims; pay a restitution fine of \$100; secure a high school diploma; obey all laws, orders, rules and regulations of the Probation Department and the court; pay the costs of probation services (\$29 per month); and perform 100 hours community service in the California Department of Transportation and/or a graffiti removal program.

5. The facts and circumstances surrounding respondent's arrest and conviction are that on or about February 22, 1990, respondent and an accomplice entered locked motor vehicles owned by others. After gaining access to the vehicles, respondent took property, including compact disks, which were the property of others.

6. On a date not specified in the record, the court found respondent to be in violation of probation and extended his probation, on the same terms and conditions, for a period of 12 months, until to April 18, 1995.¹

7. Respondent has poor recollection of the period of probation. He testified that after he completed performing community service as part of his probation, which included picking up trash and painting at a school, he was only required to report to a probation officer once or twice a year. Although respondent was directed by the court to earn a high school diploma, he did not comply with that condition.

In the Confidential Interview Information Statement that respondent completed on February 2, 2007, and submitted to the department, respondent noted that the disposition of his 1990 conviction was "1 yr probation and fine."

8. Respondent's conviction has not been expunged.

9. Respondent completed his salesperson license application "on-line" and read it thoroughly before printing and signing it. He had reason to know and knew that he was convicted of a felony offense in 1990. Although respondent testified that his failure to disclose the conviction in his application was "an oversight" it is highly unlikely that respondent did not know he was convicted of a felony offense in 1990. In his Confidential Interview Information Statement, respondent wrote that he did not disclose the conviction because he "misunderstood the term 'conviction.'"

10. Respondent is 35 years old and lives with his spouse and two young daughters who are ages three and five. He has a stable family life and fulfills his parental and familial responsibilities.

Respondent was apologetic for the time being taken to address his appeal of the department's denial of his license application. Respondent seeks a salesperson license because he wants to provide a better life style for his children.

11. For the past eight months, respondent has worked as a claims department representative for Blue Shield of California. Prior to working for Blue Shield, respondent worked for six years as a claims representative for Progressive Health Care Systems.

12. Respondent dropped out of high school when he was in the 10th grade and has not earned a graduate equivalency diploma. He has taken classes in medical terminology, which relates to his employment as a health care claims representative, and is certified as a cardio-pulmonary resuscitation and automatic external defibrillator healthcare provider through the American Heart Association. Respondent is not currently

¹ Respondent did not recall and the evidence did not otherwise establish why the court found respondent to be in violation of the terms and conditions of probation.

enrolled in any formal education or vocational training courses for economic self-improvement.

13. Respondent's conviction occurred more than 17 years ago, when he was 18 years old, had already dropped out of high school, and had been associating with friends who liked to do daring things, such as burglarize motor vehicles.

According to court records, respondent's probation was scheduled to end in April 1995. Respondent did not offer any documentary evidence to establish early termination of his period of probation. It was not established that respondent had to actually pay restitution to any victims of his crime, or that he failed to pay the court fines and penalties that were conditions of probation.

14. Respondent continues to be involved in community activities through the Vietnamese youth group at his church, which helps the homeless, visits shelters for the homeless, and conducts programs for children.

15. Since his conviction, respondent has matured and changed his social relationships. This was established through respondent's own testimony, the lack of a subsequent conviction, and two letters of reference that he provided.

One letter, which was received in evidence solely as administrative hearsay,² was from a good friend who had known respondent for 19 years. The friend described respondent as being highly dedicated, courteous, responsible and mature, and recommended him for any task that requires honesty, trustworthiness and a high level of commitment. Respondent's friend was not aware of respondent's past conviction and the conduct that resulted in his arrest.

The second letter that was received in evidence was written by respondent's "Church Friend" and supervisor at Intercontinental Financial Mgmt, Inc. The letter's author described respondent as having many valuable qualities and as being respected, goal-oriented and dedicated in both his voluntary and work activities. The author had "no hesitation in supervising respondent for any position pertaining to real estate" and believes that respondent would be a valuable asset. The letter's author was aware of respondent's past conviction, but not details about the underlying facts and circumstances surrounding respondent's arrest and conviction.

16. Respondent alone testified at the hearing. He brought no supporting witnesses to attest to his character or rehabilitative efforts.

² Administrative hearsay refers to hearsay evidence that "may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." (Gov. Code, § 11513, subd. (d))

LEGAL CONCLUSIONS

1. Business and Professions Code section 475, subdivision (a), states, in pertinent part:

Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

- (1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.
- (2) Conviction of a crime.
- (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

2. Business and Professions Code section 480, states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken . . . when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another

[¶] . . . [¶]

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

[¶] . . . [¶]

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

3. Business and Professions Code section 10177 provides, in pertinent part that the Commissioner of Real Estate may deny the issuance of a license to an applicant who has done the following:

(a) Procured, or attempted to procure, a real estate license . . . by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee . . . irrespective

of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

4. Under California Code of Regulations, title 10, section 2910, subdivision (a), when considering whether a license should be denied on the basis of an act described in Business and Professions Code section 480, subdivision (a), the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a department licensee if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

[¶] . . . [¶]

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶] . . . [¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

[¶] . . . [¶]

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

5. Respondent misstated a fact pertaining to his criminal history when he failed to disclose his 1997 conviction in his license application. That conviction included a violation for providing false identification to a peace officer. Such an offense is material, in that it raises the issue of respondent's propensity for being honest and truthful. Honesty and integrity are important qualifications for one who engages in the sale of real estate, especially when such sales represent significant investments by consumers.

Honesty and integrity are deeply and daily involved in various aspects of the practice [of real estate]. Section 10152 provides: "The commissioner may require such other proof as he may deem advisable concerning the honesty and truthfulness of any applicant for a real estate license . . . before authorizing the issuance of a real estate license." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

6. Respondent's arrest and conviction happened seventeen years ago and are events respondent would like to forget. Given the seriousness of his past felony conviction and the fact that the court extended his period of probation to April 1995, respondent's testimony that he failed to disclose the conviction in his license application was due to "an oversight" is not credible.

7. Grounds exist to deny respondent's application for a real estate salesperson license, pursuant to Business and Professions Code sections 480, subdivisions (a)(1) ^{and 475,} ~~subdivision~~ (a)(2) and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivision (a), in that respondent was convicted for committing grand theft of property, a felony. Such an offense involves dishonesty, fraud or deceit with the intent to substantially benefit himself and that is substantially related to the qualifications, functions or duties of a department licensee. (Factual Findings 4, 5 and 6.)

8. Grounds exist to deny respondent's application for a real estate salesperson license, pursuant to Business and Professions Code sections 480, subdivision ~~(a)(2)~~ ^{and 475,} ~~subdivision~~ (c) and 10177, subdivision (a), in that respondent attempted to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact when he filed an application for a real estate license in which he knowingly failed to disclose his 1990 conviction for grand theft of property, a felony conviction. (Factual Findings 2, 4, 5 and 6.)

9. California Code of Regulations, title 10, section 2911, provides criteria developed by the department for the purpose of evaluating the rehabilitation of an applicant in considering whether or not to deny the issuance of a license on account of an act committed by the applicant. The applicable criteria include the following:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. . . .

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

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

[¶] . . . [¶]

(e) Successful completion or early discharge from probation or parole.

[¶] . . . [¶]

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

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

(i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

[¶] . . . [¶]

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

[¶] . . . [¶]

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

10. In total, respondent has satisfied most of the applicable rehabilitation criteria contained in the department's regulation. However, rehabilitation is a qualitative determination, not quantitative. One cannot just add up those criteria that have been met and those that have not in order to determine whether or not a person has been rehabilitated. These factors are just indicators that a person has changed his or her ways and are, therefore, unlikely to reoffend. No one of them alone, in fact not all of them together, can guarantee that an individual is truly rehabilitated. Therefore, merely meeting these criteria does not excuse a person from responsibility for his or her prior criminal conduct nor entitle him or her to be issued a license.

11. Rehabilitation is evaluated on the basis of two different scales. One is an internal, attitudinal scale and the other is an external objective scale. In other words, respondent must present evidence both of a state of mind and a state of facts showing he has been rehabilitated. The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Acceptance of responsibility is a necessary prerequisite to establishing rehabilitation.

12. Respondent's felony conviction is 17 years old and would not have been cause for denial had respondent disclosed the conviction and established rehabilitation. (*Madrid v. Department of Real Estate* (1984) 152 Cal.App.3d 454; *Jones v. Maloney* (1951) 106 Cal.App.2d 80; *DeRasmo v. Smith* (1971) 15 Cal.App.3d 601).

13. In *Jones v. Maloney*, supra, the appellant, Jones, had failed to disclose two misdemeanor convictions on his applications for various insurance licenses. The convictions occurred nine and twenty years before Jones submitted his applications. The applied for licenses were granted. After the Insurance Commissioner became aware of the convictions, an administrative hearing was held to determine whether the licenses should be revoked. Thereafter, the Insurance Commissioner adopted the proposed

decision of the hearing officer, revoking the licenses. The court held that on the charge of obtaining a license by concealment or misrepresentation, the materiality of the matter concealed becomes important. Further, a revocation based on this charge requires a knowing misrepresentation or concealment and a showing that the matter misrepresented or concealed would have been cause for denial of the license. In that case, there was nothing in the findings or in the circumstances of the two convictions which would have been cause for the commissioner to deny the application.

14. In *DeRasmo v. Smith*, supra, petitioner, a real estate salesman, had omitted from his 1967 real estate license application a 14 year-old conviction for possession of heroin. The hearing officer found that DeRasmo was under the impression that the 1953 conviction had been expunged and that he did not have to list it on his application. The hearing officer also found that DeRasmo did not intend to deceive or mislead the commissioner, but acted in good faith when he omitted the conviction from his application. The hearing officer nevertheless determined that there was cause for discipline under Business and Professions Code section 10177, subdivision (a), and recommended revocation and issuance of a restricted license. The proposed decision was adopted by the Real Estate Commissioner and affirmed by the Superior Court. The Superior Court also found that the conviction was void because petitioner had been denied his right to counsel. The Court of Appeal reversed on the basis that the license had been improperly revoked because the void conviction itself could not have been proper grounds for denial of the license. Further, there were no grounds to support a conclusion that the license had been procured by a material misstatement.

15. In *Madrid v. Department of Real Estate*, supra, the licensee had been convicted of a felony five years before submitting his application. He was issued a real estate salesperson license after failing to disclose a felony conviction in his application. The crime was later reduced to a misdemeanor. After an administrative hearing, the department adopted the ALJ's proposed decision revoking appellant's license. The appellate court held that the conviction was neither minor nor remote in time, and accepted the determination of the ALJ that the applicant's explanation for not disclosing his conviction was not credible.

16. In *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, the department denied the applied-for license based on the applicant's two recent convictions involving dishonesty and moral turpitude, and for failing to disclose the convictions on his application. In addition, the applicant failed to disclose that his insurance sales license had been revoked, and that he had been denied a vehicle salesperson's license by the Department of Motor Vehicles. After an administrative hearing, the ALJ's proposed decision denying the application for licensure was adopted by the Department of Motor Vehicles. In *Harrington*, the appellate court found the convictions to be substantially related and noted appellant's lack of candor throughout his entire testimony.

17. In *DeRasmo* and *Jones*, the convictions were misdemeanors that were old, and there was no finding that the applicants had intended to deceive the licensing agency in failing to disclose their respective convictions. The *Madrid* and *Harrington* cases involved recent felonies, and in each of these cases the ALJ made findings that the applicant's testimony was not credible and that they intended to deceive the licensing agency when they failed to disclose their convictions. The facts of this case can be distinguished from the facts in these two lines of cases. In this case, respondent knowingly failed to disclose a 17 year-old felony conviction in his application but established rehabilitation.

18. The objective of a disciplinary proceeding is to protect the public, the licensed profession or occupation, maintain integrity and high standards, and preserve public confidence in real estate licensees.³ The purpose of proceedings of this type is not to punish respondent. The statutes relating to real estate licenses are designed to protect the public from any potential risk of harm.⁴ The law looks with favor upon those who have been properly reformed. To that end, respondent bears the burden to establish his rehabilitation against his past conviction, with due consideration to his failure to disclose that conviction in his license application.

19. In consideration of the entire record, it appears that respondent has established his rehabilitation by a preponderance of the evidence. However, given his failure to disclose his past conviction in his license application, the public would assume unwarranted risk if respondent was given an unrestricted license at this time. Respondent should be given an opportunity to demonstrate that he can fulfill all the responsibilities of a real estate salesperson prior to receiving an unrestricted license.

20. In light of the foregoing factual findings and legal conclusions, it is deemed that the public would be adequately protected if respondent was granted a restricted license as a real estate salesperson. (See *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747.)

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and

³ *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1030-1031; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

⁴ *Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.

Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of said Code:

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 that 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.

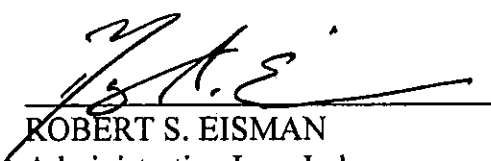
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

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.

DATED: August 14, 2007.


ROBERT S. EISMAN
Administrative Law Judge
Office of Administrative Hearings

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II

CRIMINAL CONVICTION

On or about April 3, 1990, in the Municipal Court of San Fernando, County of Los Angeles, State of California, Case No. PA002467, Respondent HAI LE was convicted of one (1) count of violating California Penal Code Section 487 (grand theft/property), a felony and crime involving moral turpitude which is substantially related under Title 10, Chapter 6, Section 2910, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

III

The crime of which Respondent was convicted, as alleged herein above, constitutes cause for denial of Respondent's application for a real estate license under Business and Professions Code Sections 475(a)(2), 480(a)(1) and 10177(b).

IV

FAILURE TO REVEAL CONVICTION

In response to Question D2 of his license application, to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE," Respondent answered "No," and failed to reveal the conviction described above.

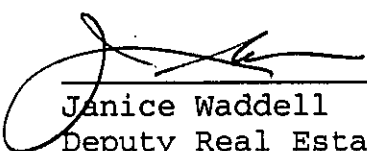
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2 Respondent's failure to reveal the conviction set
3 forth herein in his license application constitutes the attempt
4 to procure a real estate license by fraud, misrepresentation, or
5 deceit, or by making a material misstatement of fact, or
6 knowingly making a false statement of material fact required to
7 be revealed in said application, which is grounds for denial of
8 the issuance of a license under Business and Professions Code
9 Sections 475(a)(1), 480(c), and/or 10177(a).

10 These proceedings are brought under the provisions of
11 Section 10100, Division 4 of the Business and Professions Code
12 of the State of California and Sections 11500 through 11528 of
13 the Government Code.

14 WHEREFORE, Complainant prays that the above-entitled
15 matter be set for hearing and, upon proof of the charges
16 contained herein, that the Commissioner refuse to authorize the
17 issuance of, and deny the issuance of, a real estate salesperson
18 license to Respondent, HAI LE, and for such other and further
19 relief as may be proper under other provisions of law.
20

21 Dated at Los Angeles, California

22 this 24 day of April, 2007.

23
24 
25 Janice Waddell
Deputy Real Estate Commissioner

26 cc: Hai Le
27 Janice Waddell
Sacto.