

FILED
SEPT. 5, 2008
DEPARTMENT OF REAL ESTATE

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By C.A.

* * *

In the Matter of the Application of)
VINH H. TRIEU,)
Respondent.)

No. H-34801 LA

L-2008050036

DECISION

The Proposed Decision dated August 5, 2008, 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 application for a real estate broker license is denied, but the right to a restricted real estate broker license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate broker license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon
on September 25, 2008.

IT IS SO ORDERED

9-3-08
JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

VINH H. TRIEU,

Respondent.

Agency Case No. H-34801 LA

OAH Case No. L2008050036

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on July 10, 2008, in Los Angeles, California.

Lisette Garcia, Staff Counsel, represented Deputy Real Estate Commissioner Maria Suarez (Complainant).

David K. Whittingham, Attorney at Law, represented Vinh H. Trieu (Respondent). Respondent was present.

The parties submitted the matter for decision on July 10, 2008.

FACTUAL FINDINGS

1. On March 16, 2007, Respondent filed an application for a real estate broker license. The Department of Real Estate denied Respondent's application. On April 8, 2008, Complainant, in her official capacity, filed the Statement of Issues. Respondent filed the Notice of Defense on April 16, 2008.

2. Complainant contends Respondent's four count felony conviction provides grounds to deny his application for a real estate broker license pursuant to Business and Professions Code sections 475, subdivision (a)(2), 480, subdivision (a), and 10177, subdivision (b).¹

¹ Complainant pled cause for denial under Business and Professions Code section 475, subdivision (a)(2), however, under that section, the Legislature solely provides that Division 1.5 of the Code applies to matters like the instant one, where the conviction of a crime provides grounds to deny Respondent's license application; it does not provide the necessary authority to deny Respondent's license application.

3. Respondent contends his rehabilitation establishes grounds to grant his broker application.

4. On March 1, 1994, following Respondent's guilty plea, the Orange County Superior Court, in case number 93WF1290, convicted Respondent of three counts of violating Penal Code sections 664 and 187, subdivision (a) (attempted murder), and Penal Code sections 182, subdivision (1), and 415 (conspiracy, challenge to fight), all felonies.²

5. The superior court sentenced Respondent to five years in state prison (three years plus two years for enhancements pursuant to Penal Code sections 12022, subdivision (a)(1), and 186.22, subdivision (b)(1)). Respondent received 291 days credit for time spent in custody (194 days actual local time, and 97 days local conduct credit). Respondent was released on May 11, 1996, and placed on formal parole until May 11, 1999.

6. The facts underlying Respondent's convictions are that, in the summer of 1993, in Garden Grove, California, Respondent rode in an automobile with a group of his friends and acquaintances. The group included individuals who were members of a gang, known as the Dragon Family. Respondent was not a member of this gang, though his brother was. The evidence did not conclusively establish whether Respondent's brother was involved in the incident. Respondent's group confronted members of a rival gang in a parking lot and one member of Respondent's group fired a handgun three times; one bullet hit one of the rival gang members in the foot. Respondent was 18 years old when this crime occurred; he had just graduated from high school.

7. Respondent regrets having been involved in the crimes of which he was convicted. He has worked hard to change his lifestyle. He no longer associates with those individuals involved in the shooting, except that he continues to see his brother. Respondent claimed his brother was no longer in the Dragon Family gang. There was insufficient evidence to establish that claim. After his release from prison, Respondent attended the California State University Polytechnic in Pomona, and graduated in 2001 with a Bachelor's degree in Finance. He is currently the accounting manager at a private company in Irvine, California. He oversees the company's accounting department. Respondent's position requires a high level of trust by his superiors. Respondent's friends, who have known him since he completed his prison sentence, described him as honest and trustworthy. Respondent is currently studying to take the certified public accountant's examination.

² The sentencing court's abstract of judgment showed the date of conviction as March 1, 1993, but Respondent asserted the conviction date was March 1, 1994. The criminal complaint against Respondent was filed on September 27, 1993 and an information was filed on October 4, 1993. Therefore, the 1993 conviction date is deemed a typographical error.

Respondent wants a broker license because he is interested in property investments. He is very close to his family; his mother and all of his siblings live in the Orange County area, namely the cities of Westminster and Garden Grove.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent issuance of a real estate broker license pursuant to Business and Professions Code section 10177, subdivision (b), for his felony convictions, as set forth in Factual Findings 1-7, and Legal Conclusions 4-7.

2. Cause does not exist to deny Respondent issuance of a real estate broker license pursuant to Business and Professions Code section 480, subdivision (a), for his felony convictions, as set forth in Factual Findings 1-7, and Legal Conclusions 3, 4, and 10.

3. 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 the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provision of Section 1203.4 of the Penal Code.

[¶] ... [¶]

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.

4. Business and Professions Code section 10177 states in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following ...

[¶] ... [¶]

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been

affirmed on appeal, 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.

5. California Code of Regulations, title 10, section 2910 states, in pertinent part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime . . . the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Section 480 . . . of the Code if it involves:

[9] . . . [9]

(8) Doing of any unlawful act . . . with the intent or threat of doing substantial injury to the person or property of another.

[9] . . . [9]

(b) The conviction of a crime constituting an attempt . . . to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or act were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

6. California Code of Regulations, title 10, section 2911 states, in pertinent part:

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(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.

[9] . . . [9]

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

[¶] ... [¶]

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

[¶] ... [¶]

(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.

[¶] ... [¶]

(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.

7. Respondent's crimes of attempted murder and conspiracy, challenge to fight, all meet the regulatory criterion to establish a substantial relationship to a real estate licensee's qualifications, functions, and duties. (Cal. Code Regs., § 2910, subd (a)(8).)

8. Respondent has met several of the Department's regulatory criteria for rehabilitation. Significantly, it has been well over two years since his conviction; it has been 14 years. (Cal. Code Regs., tit. 10, § 2911, subd. (a).) Respondent completed his sentence and parole. (Cal. Code Regs., tit. 10, § 2911, subd. (e).) After his release from prison, Respondent diligently pursued higher education, earning a bachelor's degree in Finance. (Cal. Code Regs., tit. 10, § 2911, subd. (i).) Respondent testified credibly that he has changed his ways. (Cal. Code Regs., tit. 10, § 2911, subd. (n)(1).) He no longer associates with the individuals involved in the shooting. (Cal. Code Regs., tit. 10, § 2911, subd. (m).) At the time of his crime, Respondent was only 18; he was young and immature. Now, at the age of approximately 33, Respondent demonstrated an understanding that he chose his acquaintances poorly and should have considered the consequences of his actions. It is notable that in 15 years since he committed his crime, he has not violated the law. (Cal. Code Regs., tit. 10, § 2911, subd. (n)(5).) The absence of additional criminal behavior supports the conclusion that Respondent's crimes, as serious as they were, are best described as an isolated incident in an otherwise lawful lifestyle.

9. It is therefore reasonable to conclude that the public would be adequately protected if Respondent were issued a restricted real estate broker license, as described in the Order further below.

10. Complainant alleged Business and Professions Code section 480, subdivision (a), as a separate basis (distinct from section 10177, subdivision (b)) for denying Respondent's license application. However, in *Petropoulous v. Department of Real Estate* (2006) 142 Cal.App.4th 554, the Court of Appeal held that Business and Professions Code section 490 "does not provide independent statutory authorization for [the Department] to suspend or revoke the license of a person based on his or her conviction of a crime. Only section 10177, subdivision (b) grants [the Department] that authority." (*Petropoulous, supra*, 142 Cal.App.4th at 567.) That holding applies to this matter, where Business and Professions Code section 480 is similar to section 490, the former providing the grounds to deny an application for a state license regulated by the Business and Professions Code, while the latter involves grounds for revoking or suspending a similar state license held by a licensee; both provisions serve to add the requirement of a substantial relationship between a crime at issue and a licensee's qualifications, functions, and duties. In accordance with *Petropoulous*, however, the authority to deny Respondent's license application comes solely from Business and Professions Code section 10177, subdivision (b); section 480, subdivision (a)(1) cannot independently sustain such cause.

ORDER

Respondent's application for a real estate broker license is denied; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to the 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 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 which 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. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested, and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

Dated: August 5, 2008



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

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FILED
April 8, 2008
DEPARTMENT OF REAL ESTATE

By C2

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) NO. H-34801 LA
12)
13 VINH H. TRIEU,) STATEMENT OF ISSUES
14)
15 Respondent.)

16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against VINH H. TRIEU, aka Vinh Hoan Trieu and Vinh Trieu
19 ("Respondent"), is informed and alleges in her official capacity
20 as follows:

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22 On or about March 16, 2007, Respondent made
23 application to the Department of Real Estate of the State of
24 California, for a real estate broker license.

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II

On or about March 1, 1994, in the Superior Court of California, County of Orange, Case No. 93WF1290, Respondent was convicted of violating three counts of Penal Code Section 664/187(a) (attempted premeditated murder)¹ and one count of Penal Code Section 182(1)/415 (conspiracy/challenge to a fight), all felonies. Said crimes involve moral turpitude and bear a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

III

The crimes of which Respondent was convicted, as alleged in Paragraph II above, constitute cause for denial of Respondent's application for a real estate license under Business and Professions Code Sections 475(a)(2), 480(a), and 10177(b).

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

¹ Counts 1, 2, & 3 had enhancements pursuant to Penal Code §12022(A)(1) (firearm) and Penal Code §182 (gang activity). The enhancements were imposed and stayed pending successful completion of sentence on Count 4 and then permanently stayed. Respondent was sentenced to 5 year total prison term.

1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the
3 charges contained herein, that the Commissioner refuse to
4 authorize the issuance of, and deny the issuance of, a real
5 estate broker license to Respondent, VINH H. TRIEU, and for such
6 other and further relief as may be proper in the premises.

7 Dated at Los Angeles, California
8 this 1st day of April, 2008.

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12 Deputy Real Estate Commissioner
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24 cc: Vinh H. Trieu
25 Sacto.
26 Maria Suarez
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