

BEFORE THE DEPARTMENT OF REAL ESTATE

By C.A.

STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of) No. H-35193 LA
HOAI KHUONG NGUY DO,) L-2008090930
Respondent.)

DECISION

The Proposed Decision dated January 30, 2009, 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 salesperson license is denied, but the right to a restricted real estate salesperson 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 of Section 11522 is attached hereto for the information of Respondent.

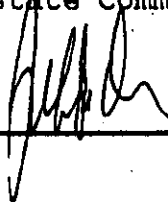
If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria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

This Decision shall become effective at 12 o'clock noon on March 25, 2009.

IT IS SO ORDERED

3/5/09

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

HOAI KHUONG NGUY DO,

Respondent.

Case No. H-35193 LA

OAH No. 2008090930

PROPOSED DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings (OAH), in Los Angeles, California, on November 12, 2008.

Joseph Aiu (Complainant) was represented by Lissete Garcia, Counsel for the Department of Real Estate (the Department).

Hoai Khuong Nguy Do (Respondent) represented himself.

At the hearing, Respondent requested that the Statement of Issues be amended to reflect his true name, Hoai Khuong Nguy Do. Complainant did not object, and the changes were made by interlineation on page 1, at lines 13 and 18, and on page 3, at line 15. Oral and documentary evidence was received. The record was left open until December 5, 2008, to allow Complainant to submit criminal conviction records, and for Respondent to submit documents demonstrating rehabilitation, as well as to allow Complaint and Respondent to file objections to the other party's submissions. On November 19, 2008, Complainant's counsel filed a written request for an extension of time, until December 10, 2008, for Complainant to submit the records, and to give Respondent until December 17, 2008, to respond to these records. This letter was marked for identification as Exhibit 6. On November 20, 2008, Respondent submitted eight documents, with a cover letter, which, collectively, were marked for identification as Exhibit A. On November 26, 2008, Complainant submitted the criminal records, which were marked as Exhibit 7. Complainant filed a written notice stating he did not object to Respondent's documents, which was marked as Exhibit 8. Both Exhibit 7 and Exhibit A were admitted into evidence. The record was closed and the matter was submitted for decision on December 17, 2008.

FACTUAL FINDINGS

1. The Statement of Issues was made by Complainant, who is a deputy real estate commissioner of the state of California, acting in his official capacity, and was filed on August 8, 2008. Respondent's request for hearing was filed on September 3, 2008.

2. On or about April 30, 2007, Respondent filed a written application for a real estate salesperson license. The application is pending.

3. On February 28, 2001, in the Superior Court of California, County of Orange, in case no. 01WM01799, Respondent was convicted, based on his plea of guilty, of violating Penal Code section 459-460, subdivision (b) (second degree commercial burglary), a misdemeanor. This crime involves dishonesty and moral turpitude, and is substantially related to the qualifications, functions, or duties of a real estate salesperson.

3b. At sentencing, the court ordered Respondent to perform 80 hours of CalTrans work and pay a small fine.

3c. The facts and circumstances surrounding the conviction are as follows. On February 1, 2001, Respondent entered a Robinsons-May department store with a friend. He was carrying a pair of wire cutters concealed in his clothing. He took a pair of "Polo" jeans from a store shelf into a dressing room, cut the sensor tag off the pants, and put the pants on underneath the pants he was wearing when he entered the store. He then attempted to leave the store without paying for the pants. Respondent was 18 years old at the time.

4a. On November 12, 2002, in the Superior Court of California, County of Orange, in case no. 02WM07475, Respondent was convicted, based on his plea of guilty, of violating Penal Code section 12020, subdivision (a)¹ (possessing a deadly weapon), a misdemeanor. This crime does not involve moral turpitude because the involved instrument, a hammer, is not clearly denoted by the statute, and it was in plain view in Respondent's vehicle; however, this crime is substantially related to the qualifications, functions, and duties of a real estate salesperson. (See Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

¹ Section 12020, subdivision (a), provides in relevant part as follows:

Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any fléchette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag.

4b. Imposition of sentence was suspended and Respondent was placed on informal probation for a period of two years under certain terms and conditions, including 20 days of Cal Trans work, and fines and fees in the sum of \$250.

4c. The facts and circumstances surrounding the conviction are as follows. On August 24, 2002, Respondent had gone to the Family Billiards Club in Garden Grove, which was frequented by local Asian gang members. When police officers entered the premises, they spotted Respondent and believed he was someone else who had an outstanding warrant. They asked Respondent for his identification, which he produced. They then asked to search the vehicle he was driving, which belonged to his mother, but he refused. An officer then observed through the vehicle's window what appeared to be a stick or club on the floorboard underneath the right rear seat; the officer concluded that this was a weapon. Respondent was arrested and jailed. Although the instrument was a claw hammer, Respondent was charged with possession of a weapon, because this hammer ostensibly could be used like a billy club.

5. In aggravation, on December 20, 2000, in the Superior Court of California, County of Orange, in case no. 00WM11984, Respondent was convicted, based on his plea of guilty, of violating Westminster Municipal Code section 9.69.010 (trespassing on school grounds), a misdemeanor.

6. On March 13, 2007, the court granted Respondent's three requests under Penal Code section 1203.4 (expungement), whereby Respondent's guilty pleas were set aside, new pleas of not guilty were entered, and the complaints in all three of Respondent's convictions were dismissed.

7. Respondent was immature when he committed these crimes. He has taken responsibility for these crimes. Before his 2002 conviction, he had moved away from his old neighborhood and no longer associated with the people from his past. In the 2002 matter, Respondent was in jail for two weeks following his arrest, at which time he became aware that his girlfriend was pregnant. Because he did not want to be in jail when his child was born, he agreed to plead to the charge. At this point, Respondent started to realize how his actions were affecting his family, including his mother and potentially his unborn child. He committed to take steps to turn his life around. Respondent is the father of two children, ages five and three, and his main concerns today are how to care and provide for them.

8. After his last conviction, Respondent took courses at a community college. He received a Realty College Completion Certificate (Real Estate Principles) in May 2004. Beginning in June 2004, he was employed for more than one year as a forklift operator at Three G's, Inc. From January to August 2006, he was a forklift operator for Big 5 Sporting Goods. Respondent attended the Advance Beauty College, where he received a diploma to become a manicurist in October 2006. In 2007, Respondent enrolled in the Office Occupations training courses at Riverside Adult School, where he learned how to type, and to use Word and other computer programs. He moved to Wisconsin briefly, where other members of his family were living, but returned to California to be close to his children.

9. Since January 2008, Respondent has been working full-time, six days per week, as a manicurist at Pro Nails, an establishment in Perris, California. He appears motivated to set a good example for his children.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b), in conjunction with section 480, subdivision (a), for conviction of a crime involving moral turpitude, by reason of factual finding number 3. Respondent's theft conviction, which involves dishonesty, is a crime of moral turpitude and is substantially related to the qualifications, functions, and duties of a real estate salesperson. Complainant has not established that Respondent's 2002 offense is a crime of moral turpitude.

2. The Department has developed criteria under Business and Professions Code section 482, subdivision (a), for the purpose of evaluating the rehabilitation of an applicant for licensure, in considering whether to deny the license on the basis of convictions or wrongful acts. (Cal. Code Regs., tit. 10, § 2911.) Respondent has satisfied some of the Department's criteria. For example, it has been six years since his most recent conviction (§ 2911, subd. (a), although a longer period often is required if there is a history of misconduct, Respondent's crimes are relatively remote in time). Respondent paid his fines, his probation terminated approximately four years ago, and his convictions were expunged (§ 2911, subds. (c), (e) & (g)). Respondent's familial relationships appear to be stable (§ 2911, subd. (h)), although Respondent offered no evidence corroborating his testimony in this regard. He has completed formal educational and vocational training courses for economic self-improvement (§ 2911, subd. (i)). Respondent no longer lives in the area where the crimes occurred and does not associate with the same people as when he was involved in criminal activities (§ 2911, subd. (m)). Respondent demonstrated, through his motivations as a parent, that he has matured since his convictions (§ 2911, subd. (n)(1)). He accepts responsibility for his convictions and wants to put them behind him. He works hard, and wants to become more productive and successful.

3. The purpose of the regulatory statutes is to protect the public, not punish the individual. On balance, Respondent has established rehabilitation sufficient to justify a restricted salesperson license under terms that will protect the public.

ORDER

The application of Respondent, Hoai Khuong Nguy Do, 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 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 three years have elapsed from the date of issuance of the restricted license to Respondent.

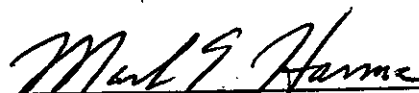
3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(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.

4. 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.

January 30, 2009


MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings

582
LISSETE GARCIA, Counsel (SBN 211552)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-6914

FILED
AUG. 8, 2008
DEPARTMENT OF REAL ESTATE

By C.A.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of) NO. H-35193 LA
)
KHUONG NGUY DO HOAI,) STATEMENT OF ISSUES
)
Respondent.)

The Complainant, Joseph Aiu, a Deputy Real Estate
Commissioner of the State of California, for Statement of Issues
against KHUONG NGUY DO HOAI, aka Khuong Hoai Nguy Do
("Respondent"), is informed and alleges in his official capacity
as follows:

I

On or about April 30, 2007, Respondent made
application to the Department of Real Estate of the State of
California, for a real estate salesperson license.

///

///

///

1
2 II

3 On or about February 28, 2001, in the Superior Court
4 of California, County of Orange, in Case No. 01WM01799,
5 Respondent was convicted of violating Penal Code Section 459-
6 460(b) (second degree burglary-commercial), a misdemeanor. Said
7 crime involves moral turpitude and bears a substantial
8 relationship under Section 2910, Title 10, Chapter 6, California
9 Code of Regulations, to the qualifications, functions or duties
10 of a real estate licensee.

11 III

12 On or about August 24, 2002, in the Superior Court of
13 California, County of Orange, in Case No. 02WM07475, Respondent
14 was convicted of violating Penal Code Section 12020(a)
15 (possess/manufacture/sell deadly weapon), a misdemeanor. The
16 underlying facts of said crime involve moral turpitude and bear
17 a substantial relationship under Section 2910, Title 10,
18 Chapter 6, California Code of Regulations, to the
19 qualifications, functions or duties of a real estate licensee.

20 IN AGGRAVATION

21 IV

22 On or about December 20, 2000, in the Superior of the
23 State of California, Orange County, Case No. 00WM11984,
24 Respondent was convicted of violating Westminster Municipal Code
25 Section 9.69.010 (trespassing on school grounds), a misdemeanor.

26 ///

27 ///

The crimes of which Respondent was convicted, as alleged in Paragraphs II and III 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.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, KHUONG NGUY DO HOAI, and for such other and further relief as may be proper in the premises.

Dated at San Diego, California

this 6 day of August 2008.


JOSEPH AIU
Deputy Real Estate Commissioner

cc: Khuong Nguy Do Hoai
Joseph Aiu
Sacto.