

FILED

AUG 19 2010

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

HOA PHU TRUONG,)

Respondent.)

NO. H-36270 LA
L-2009120287ORDER EXTENDING TIME

On June 28, 2010, a Decision was rendered herein suspending the real estate broker license of HOA PHU TRUONG ("Respondent") for a period of sixty (60) days. Said suspension would be stayed upon the condition that Respondent pay a monetary penalty of \$3,000 by the effective date of the Decision. The Decision was to become effective on July 22, 2010. Respondent petitioned for reconsideration of the Decision and submitted argument in support of his petition. An Order Staying Effective Date was filed on July 13, 2010, staying the effective date for thirty (30) days until 12 o'clock noon on August 20, 2010.

On August 16, 2010, Respondent subsequently requested an extension of time for payment of the \$3,000 penalty.

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1 Good cause having been shown, the time during which Respondent must
2 complete the condition described above is hereby extended to November 19, 2010.

3 This Order shall be effective immediately.

4 DATED: 8-18, 2010.

5 JEFF DAVI
6 Real Estate Commissioner

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JUL 13 2010

DEPARTMENT OF REAL ESTATE
BY: Richard [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) No. H-36270 LA
HOA PHU TRUONG,) L-2009120287
Respondent.)

ORDER STAYING EFFECTIVE DATE

On June 28, 2010, a Decision was signed in the above-entitled matter to become effective July 22, 2010.

IT IS HEREBY ORDERED that the effective date of the Decision of June 28, 2010, is stayed for a period of 30 days.

The Decision of June 28, 2010, shall become effective at 12 o'clock noon August 20, 2010.

DATED: JULY 12, 2010

JEFF DAVI
Real Estate Commissioner

Phillip Ihde
By: Phillip Ihde
Regional Manager

FILED

JUL - 2 2010

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

* * * * *

In the Matter of the Accusation of	)	No. H-36270 LA
	)	
	)	L-2009120287
	)	
HOA PHU TRUONG,	)	
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	)	
	)	
Respondent(s).	)	
_____	)	

DECISION

The Proposed Decision dated June 9, 2010,
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
JUL 22 2010
o'clock noon on _____.

IT IS SO ORDERED 6/28/10

JEFF DAVI
Real Estate Commissioner

[Signature]

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

HOA PHU TRUONG,

Case No. H-36270 LA

OAH No. 2009120287

Respondent.

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on May 18, 2010.

Shari Sveningson, Staff Counsel, represented Maria Suarez (Complainant), a Deputy Real Estate Commissioner in the Department of Real Estate (Department), State of California.

Hoa Phu Truong (Respondent) represented himself and was present throughout the hearing.

Oral and documentary evidence was received, and the matter argued.

The case was submitted for decision on May 18, 2010.

FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in her official capacity.
2. Respondent is presently licensed by the Department as a real estate broker under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code. Respondent was originally issued a salesperson license on May 27, 1976. His broker license originally was issued to him on August 30, 1982.
3. Respondent is also an attorney licensed to practice in California. On January 10, 2008, in the California Supreme Court, Respondent was suspended from the practice of

law for two years. The execution of the suspension was stayed, and Respondent was placed on probation for two years on condition that he be actually suspended for two months. Respondent was also ordered to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving a Stipulation filed September 17, 2007. Respondent was further ordered to take and pass the Multistate Professional Responsibility Examination. Costs were awarded to the State Bar.

Prior to the hearing in the Supreme Court, Respondent entered into a stipulation with counsel for the State Bar including agreement on the following matters:

No aggravating circumstances are involved.

No Harm: Respondent did not harm the client or person who was the object of the misconduct.

Candor/Cooperation: Respondent displayed spontaneous candor and cooperation with the victims of his misconduct and to the State Bar during disciplinary investigation and proceedings.

Discipline:

Stayed Suspension:

Respondent must be suspended from the practice of law for a period of two (2) years.

The above-referenced suspension is stayed.

Actual Suspension:

Respondent must be actually suspended from the practice of law in the State of California for a period of two (2) months

Additional Conditions of Probation:

During the probation period, Respondent must comply with the provisions of the State Bar Act and Rule of Professional Conduct.

Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information.

Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation.

Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation.

Within one (1) year of the effective date of the discipline herein, Respondent must provide satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

Other Conditions Negotiated by the Parties:

Multistate Professional Responsibility Examination: Respondent must provide proof of passage of the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage.

Law Office Management Conditions:

Within 6 months of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 6 hours of Minimum Continuing Legal Education approved courses in law office management, attorney client relations and/or general legal ethics.

The facts and circumstances relating to Respondent's State Bar Discipline are as follows:

I. Case 1 - In October 2002, client 1 employed Respondent to file a Petition for Non Immigrant Worker, Form I-129, with the Immigration and Naturalization Services (INS). Client 1 wanted to hire twelve nationals from Vietnam to work for her business establishment as manicurists. On October 1, 2002 Respondent and Client 1 executed an employment agreement, pursuant to which Client 1 would first pay Respondent \$8,000, then an additional \$8,000 sixty days from the filing of the Petition with the INS. Upon execution of the employment agreement, Client 1 paid Respondent \$8,000 in advanced attorney fees. Respondent, on July 4, 2003, filed a request for a labor certification with the U.S. Department of Labor on behalf of Client 1 and a temporary certification was granted. Between December 1, 2003, and October 10 2003, Client 1 paid Respondent an additional \$8,000. In December 2003, Respondent filed with the INS a Form I-129 Petition and G128 Notice of Entry of Appearance as Attorney on behalf of Client 1. Respondent erroneously listed the classification of the non-immigrant beneficiaries as H-1B, which is a specialty occupation requiring a baccalaureate degree or its equivalent. On March 1, 2004, the INS sent Respondent a Request for Additional Evidence and notifying Respondent that the classification did not apply to non-immigrant beneficiaries of Client 1's petition and specifically informing Respondent that denial of the petition did not preclude Respondent from filing a new Form I-129. Respondent did not respond to the INS' correspondence and did not inform his client of the action. In early March 2004, Client 1 moved to another city. Client 1 checked the INS internet and learned that the INS had sent a notice to Respondent requesting additional evidence. Client 1 called Respondent and faxed him a copy of the information she had found on the Internet. Subsequent to March 2004, Respondent did not file a new Form I-129 on behalf of Client

1. On September 17, 2004, the INS sent Respondent a Notice of Decision denying Client 1's application. Respondent did not inform Client 1 of the denial of her application. Client 1 employed new counsel and requested that Respondent refund the unearned portion of the \$16,000 she had paid Respondent. Respondent then sent a letter to Client 1 informing her of the denial of the petition but did not refund any portion of the \$16,000 Client 1 had paid him. On May 2005, the State Bar opened an investigation pursuant to a complaint Client 1 filed. On October 10, 2006, Respondent refunded \$10,000 to Client 1. (The amount paid was worked out with the State Bar.) The State Bar's Legal Conclusion was as follows:

By not filing a new Form I-129 on behalf of Client 1, with a classification that would be applicable to the type of alien workers sought by Client 1 for her business, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of Rule 3-110(a) of the Rules of Professional Conduct.

II. Case 2 – On February 25, 2005, Clients 2 (husband and wife) employed Respondent to represent them in an adversary bankruptcy matter. At the time of employment, Respondent spent about three hours with them, discussing the documents they provided him. Respondent and Clients 2 executed an employment agreement that requested a \$1,500 payment from each them as "nonrefundable legal fees." Respondent received a total of \$4,500 from them. On February 26, 2005, Clients 2 called Respondent to advise him that they wanted to cancel the employment agreement and requested the return of their files and refund. Respondent agreed to return the files and refund the legal fees. On March 1, 2005, Respondent sent Clients 2 the documents they had provided him but did not refund any portion of the fees paid. On March 10, 2005, an attorney acting on behalf of Clients 2 sent Respondent a letter requesting that Respondent refund the fees paid. On March 11, 2005, Respondent sent Clients 2's new attorney a letter stating that Clients 2 were not entitled to a refund. On June 1, 2005, the State Bar opened an investigation pursuant to a complaint filed by the Clients 2. On June 26, 2006, Respondent refunded \$3,000 to Clients 2. (This amount was worked out with the State Bar.) Legal Conclusion of the State Bar - By returning the unearned portion of the legal fees paid by Clients 2 more than a year after their request for a refund, Respondent failed to promptly refund unearned fees in willful violation of Rule 307 (D) (2) of the Rule of Professional Conduct.

4. Respondent has satisfied all the terms and conditions imposed by the State Bar's disciplinary proceedings. On February 9, 2010, the State Bar of California's Office of Probation sent Respondent a letter stating that the office was closing its file on Respondent since no further conditions required its continued monitoring.

5. Respondent indicated that he has corrected his employment agreements with clients to conform to current State Bar requirements.

6. Respondent currently is in good standing with the California State Bar.

7. No complaints have been filed against Respondent's licenses from the Department. Respondent currently uses his broker's license in connection with his legal representation of clients.

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code section 10100 et seq. and Government Code sections 11500 through 11528.

2. Cause exists, pursuant to Business and Professions Code sections 475, subdivision (a) (4), 480, subdivision (a) (3) and 10177, subdivision (f), to take disciplinary action against Respondent's license and licensing rights from the Department for the actions which formed the basis of the disciplinary proceedings against Respondent's State Bar license (Factual Findings 3 and 4) since if those actions had taken place involving licenses issued by the Department grounds would have existed for such action.

3. Respondent has satisfied all of the terms and conditions imposed upon him in the State Bar disciplinary proceedings set forth in Factual Findings 3 and 4. He is currently in good standing before the California State Bar. No complaints have been made against any licenses Respondent has held from the Department since he was initially licensed in 1976. Under these circumstances, the public interest and public welfare will be adequately served by permitting Respondent to pay a monetary penalty to the Department in lieu of an actual license suspension as provided in Business and Profession Code section 10175.2.

ORDER

All licenses and licensing rights of Respondent Hoa Phu Truong under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Decision; provided, however, that if Respondent petitions, said suspension shall be stayed upon condition that:

1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$50.00 for each day of the suspension for a total monetary penalty of \$3,000.00.

2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Decision in this matter.

3. No further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision in this matter.

4. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

5. If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

Dated: June 9, 2010.



N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings

SHARI SVENINGSON, Counsel (SBN 195298)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-6907

FILED
SEP 25 2009
DEPARTMENT OF REAL ESTATE

Handwritten signature: R. Theodor

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-36270 LA
HOA PHU TRUONG,) A C C U S A T I O N
Respondent.)

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against HOA PHU TRUONG, aka Daniel H. Truong ("Respondent"), is informed and alleges in her official capacity as follows:

1.

Respondent is presently licensed by the Department of Real Estate of the State of California ("Department") as a real estate broker under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code").

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LICENSE DISCIPLINE

On January 10, 2008, the Supreme Court of California issued an Order which adopted the Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension ("Stipulation") in State Bar of California Case Nos. 05-O-02918 and 05-O-02922. The Order, which became effective on February 9, 2008, suspended Respondent from the practice of law for two years, stayed, that he be placed on probation for two years on the condition he be actually suspended for two months. In Case No. 05-O-02918, Respondent admitted to failing to failing to perform legal services competently, failing to inform a client of a significant development and failing to promptly refund unearned fees. In Case No. 05-O-02922, Respondent admitted to failing to promptly refund unearned fees.

3.

The prior discipline against Respondent's State Bar of California license, as alleged in Paragraph 2 above, constitutes cause for revocation of Respondent's real estate license under Business and Professions Code Sections 475(a)(4), 480(a)(3), and 10177(f).

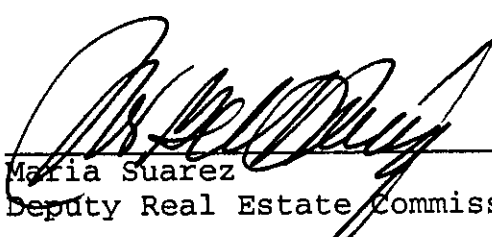
These proceedings are brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11528 of the California Government Code.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and, that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondent,
5 HOA PHU TRUONG, under the Real Estate Law (Part 1 of Division 4
6 of the Business and Professions Code) and for such other and
7 further relief as may be proper under other applicable
8 provisions of law.
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10 Dated at Los Angeles, California

11 this 17th day of September, 2009.
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15 Maria Suarez
16 Deputy Real Estate Commissioner
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26 cc: HOA PHU TRUONG
27 Maria Suarez
Sacto.