

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

FILED

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OCT 21 2015

In the Matter of the Accusation of

LY HOANG,

Respondent.

) CalBRE No. H-39804 LA

) OAH No. 2015050421

BUREAU OF REAL ESTATE

By 

DECISION

The Proposed Decision dated September 16, 2015 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision:

Factual Findings, Page 2, Paragraph No. 6, Line 4, "May 28" is amended to read "May 28, 2014".

Factual Findings, Page 2, Paragraph No. 9, Line 3, "(subtotal (\$547.85))" is amended to read "(subtotal \$547.85)".

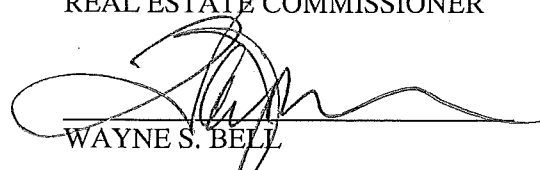
The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on NOV 10 2015.

IT IS SO ORDERED

10/15/2015
REAL ESTATE COMMISSIONER


WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LY HOANG,

Respondent.

BRE No. H-39804 LA

OAH No. 2015050421

PROPOSED DECISION

This matter was heard on September 10, 2015, in Los Angeles, California, by David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California. Ly Hoang (respondent) represented herself. Maria Suarez (complainant), Deputy Real Estate Commissioner, was represented by Judith Vasan, Counsel for the Bureau of Real Estate (Bureau).

Oral and documentary evidence was received. The matter was submitted for decision on September 10, 2015.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent was initially licensed as a real estate salesperson by the Department of Real Estate (predecessor to the Bureau) on February 14, 2002. The salesperson license terminated when respondent became licensed as a real estate broker on February 3, 2007. The real estate broker license expired on February 2, 2015. Respondent is awaiting the outcome of this matter to decide whether to renew the license. The Bureau has jurisdiction over the expired license under Business and Professions Code section 10103.¹ There was no evidence of any prior discipline imposed against respondent's licenses.
3. On May 19, 2014, respondent was convicted on her plea of nolo contendere to violating Penal Code section 484, subdivision (a), petty theft, a misdemeanor. (Superior Court of California, County of Los Angeles, case number 4PY00608.) The crime bears a

¹ All statutory references are to the Business and Professions Code unless otherwise noted. All references to the California Code of Regulations are to title 10, and are designated "10 CCR."

substantial relationship to the qualifications, functions or duties of a real estate licensee under 10 CCR, section 2910, subdivision (a)(8).

4. The proceedings were suspended and respondent was placed on summary probation for 36 months under terms and conditions, including serving one day in jail with credit for one day served, payment of fines and assessments, and performing 20 days of community labor with credit for one day.

5. On January 1, 2014, respondent, her husband and two young children were shopping in a mall. Respondent bought clothing for herself at a Macy's store, and left the store through an open entrance to the mall with other clothing items for which she had not paid. Respondent explained that she was interested in buying the items for family members, and was distracted, first by trying to call them, and then by trying to call her husband to locate him and the children. Her phone reception was bad and she walked out of the store and into the mall. She was detained by store security workers, who confirmed respondent's testimony that the unpaid items were exposed and on her arm, not in the bag with her purchases.

6. Respondent established through her testimony that she is very remorseful for the incident. She had no intention to steal the items. She accepted the outcome, and completed her community service quickly. After intake at the referral program on May 19, 2014, she began community service on May 28 and completed it on June 22, 2014. She has paid all fines and penalties ordered by the court. Respondent recently gave birth and, although not in the best of health, was anxious for the hearing and a conclusion to this matter.

7. Respondent has worked for Valley Financial Services since she obtained her first license. For the last seven years she has worked as a loan processor. Respondent informed her supervisor of her conviction. Respondent also works a side job, about 20 hours per week, as a finance analyst for Kia Entertainment. She provided no other details. Respondent's husband lost his job two months ago. Respondent's family has been providing financial support.

8. Respondent is involved in church activities, and recently resigned after three years as secretary of the congregation. Respondent was sincere in her expression of remorse and cherishes her license. She assured the Bureau that the incident should not have occurred and that nothing like it would happen in the future. Her licensed activities had provided the main income for support of her family.

9. Complainant submitted evidence of the costs of investigation and enforcement of this matter, summarized as follows: 8.85 hours in described investigation activities, by three Bureau employees at rates ranging from \$37 to \$80 per hour (subtotal (\$547.85); and 2.4 hours in described legal activities by attorney Vasan at the rate of \$89 per hour (subtotal \$213.60), for total costs claimed of \$760.45.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See, *Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)
2. Under Code section 10177, subdivision (b), a real estate licensee may have her license suspended or revoked for conviction of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee.
3. Under Code section 490, the Bureau may "suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."
4. Under 10 CCR, section 2910, subdivision (a)(8), a crime is substantially related to the qualifications, functions, or duties of a real estate licensee if it was done "with the intent or threat of doing substantial injury to the person or property of another." Even though respondent stated she had no intent to steal the clothing, her lack of attention created the threat that she would leave the store without paying for it.
5. Complainant contended that the crime was also substantially related to the qualifications, functions, or duties of a real estate licensee under 10 CCR, section 2910, subdivision (a)(1), a fraudulent taking of another's property, and 10 CCR, section 2910, subdivision (a)(4), the employment of fraud or deceit. These contentions require an element of intent that was not established in the evidence.
6. There is cause to suspend or revoke respondent's real estate broker license pursuant to Code sections 490 and 10177, subdivision (b), because respondent was convicted of a crime substantially related to the qualifications, functions and duties of her license, as set forth in Factual Findings 2 - 4.
7. Criteria have been developed by the Bureau to evaluate the rehabilitation of a licensee who has committed a crime. These criteria, found at 10 CCR, section 2912, are summarized as follows:

Subdivision (a), passage of at least two years since the conviction or the underlying acts;
Subdivision (b), restitution;
Subdivision (c), expungement of the conviction;
Subdivision (d), expungement of the requirement to register as a sex offender;

Subdivision (e), completion of, or early discharge from, the criminal probation;
Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
Subdivision (g), payment of any criminal fines or penalties;
Subdivision (h), correction of business practices causing injury;
Subdivision (i), new and different social and business relationships;
Subdivision (j), stability of family life;
Subdivision (k), enrollment in or completion of educational or training courses;
Subdivision (l), significant involvement in community, church or private programs for social betterment; and

Subdivision (m), change in attitude from the time of conviction to the present, evidenced by: testimony of the licensee and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

8. It has been less than two years since respondent's conviction. Respondent has paid the court fines and fees. The conviction has not been expunged. Respondent acknowledges that the conduct resulted from her lack of attention and is remorseful for her conduct. Respondent has a stable family life, with the addition of a new child and the unfortunate loss of her husband's job. Respondent has been involved in her church's activities.

9. Respondent has not satisfied enough of the rehabilitation criteria to maintain her broker license at this time in a manner consistent with protection of the public. Further, it is troubling that respondent did not bring any supporting evidence from sources other than herself. Her husband or other witnesses did not testify or provide letters of support to lend credibility or substance to respondent's own testimony of rehabilitation. "Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living" can be helpful in determining whether a person seeking licensure is rehabilitated. (See, *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317 – 318.) The Bureau's rehabilitation criteria about a change in attitude (10 CCR, section 2912, subdivision (m)(2)), refers to evidence from outside sources: "from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns."

10. However, the evidence established a single incident of petty theft under circumstances indicating it was more likely due to inattention than any propensity by respondent to steal from another. The public will be adequately protected if respondent is allowed to apply for a restricted salesperson license, as the license requires respondent to be supervised in her performance of activities that require the license, the respondent's supervisor must be notified of the decision in this matter, and the respondent's supervisor must exercise close supervision over respondent.

11. Under Code section 10106, the Bureau may recover costs "not to exceed the reasonable costs of the investigation and enforcement" of this matter. As set forth in Factual

Finding 9, the costs claimed are \$760.45. These costs are reasonable. However, the circumstances require a downward adjustment.

12. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Code section 10106. In so doing, however, the Court directed the administrative law judge and the licensing agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Bureau must not assess the full costs where it would unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Bureau must consider a licensee's subjective good faith belief in the merits of his or her position and whether the licensee has raised a colorable challenge; the Bureau must consider a licensee's ability to pay; and the Bureau may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.* at p. 45.)

In this case, taking into account respondent's limited ability to pay, a 50 percent reduction from the actual costs is appropriate. Therefore, the reasonable costs of investigation and enforcement are \$380.24.

ORDER

All licenses and licensing rights of respondent Ly Hoang under the Real Estate Law are revoked; provided however a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5, if respondent makes application therefore and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

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

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

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

4. Respondent shall obtain from her present broker, or submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. 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.

7. Respondent shall pay costs of \$380.24 to the Real Estate Commissioner in the form of a cashier's check or certified check within 30 days of the effective date of this Decision, or on a payment plan by agreement with the Commissioner.

DATED: September 16, 2015.

DocuSigned by:
David Rosenman
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DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings