

**FILED**

**FEB 18 2022**

**DEPT. OF REAL ESTATE**

*[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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|                                      |   |                    |
|--------------------------------------|---|--------------------|
| In the Matter of the Application of: | ) | DRE No. H-42072 LA |
|                                      | ) |                    |
| XUOI HUYNH,                          | ) | OAH No. 2021100792 |
|                                      | ) |                    |
| Respondent.                          | ) |                    |

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DECISION

The Proposed Decision dated January 5, 2022, 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.

Legal Conclusions, Page 6, Paragraph 1 reads as, "...subdivisions (f), (g), and (h)..." corrected as, "...subdivisions (f), (g), and (j)..."

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. 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

Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on MAR 10 2022.

IT IS SO ORDERED 7.10.22

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

Douglas R. McCauley

**BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**In the Matter of the Statement of Issues Against:**

**XUOI HUYNH, Respondent**

**Agency Case No. H-42072 LA**

**OAH No. 2021100792**

**PROPOSED DECISION**

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 9, 2021.

Andrea Bentler, Counsel for the Department of Real Estate (Department), represented Maria Suarez (complainant), a Supervising Special Investigator of the State of California.

Michael B. Levin, Law Offices of Michael B. Levin, represented Xuoi Huynh (respondent). Respondent's name is mistakenly stated as "Huynh Xuoi" in the Statement of Issues.

Translator Quy Dao, Focus Interpreting, #300130, provided English to Vietnamese and Vietnamese to English translation services for respondent.

Testimony and documents were received as evidence. The record closed and the matter was submitted for decision on December 9, 2021.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On November 6, 2019, respondent filed an application for licensure as a real estate salesperson with the Department.
2. On September 14, 2021, complainant filed the Statement of Issues in her official capacity. The Statement of Issues alleged causes to deny respondent's application.
3. On September 21, 2021, respondent filed a Notice of Defense, which requested a hearing on the allegations in the Statement of Issues.
4. All jurisdictional requirements have been met.

### **Revocation of Respondent's Bureau of Automotive Repair Licenses**

5. Complainant alleges that cause exists to deny respondent's application for licensure as a real estate salesperson because the Bureau of Automotive Repair (BAR) previously revoked two licenses held by respondent.

#### **BAR ISSUED LICENSES HELD BY A1 SMOG**

6. Respondent previously owned and served as the president of A1 Smog & Auto Pros Inc., doing business as A1 Smog & Auto Pros, Inc. (A1 Smog).
7. In 2000, BAR issued Automotive Repair Dealer Registration No. ARD 211861 and Smog Check Station License No. RC 211861 to A1 Smog.

8. In 2005, BAR issued Brake Station License No. BS 211861, Class C, and Lamp Station License No. LS 211 861, Class A, to A1 Smog.

9. The four BAR-issued licenses held by A1 Smog were active and unrestricted until May 22, 2000.

#### **BAR ISSUED LICENSE HELD BY RESPONDENT**

10. In 1998, BAR issued Smog Check Inspector License No. EO 135880 and Smog Check Repair Technician License No. EI 135880 to respondent.

11. In 2004, BAR issued Brake Adjuster License No. BA 135880, Class C; and Lamp Adjuster License No. LA 135880, Class A, to respondent.

12. The four BAR-issued licenses held by respondent were active and unrestricted until May 22, 2000.

#### **THE 2018 BAR UNDERCOVER RUNS**

13. The underlying events leading to the revocation of two of respondent's licenses occurred in February and May 2018 when BAR sent two undercover vehicles to A1 Smog. Respondent was asked to perform a smog inspection and test, and brake and lamp inspections, on each vehicle.

14. Respondent properly performed the smog inspection and test on each vehicle, but he failed to perform brake and lamp inspections on either vehicle. The two customers were charged for brake and lamp inspections. Respondent testified that his business was almost exclusively comprised of smog inspections and tests. He performed very few brake and lamp inspections. Respondent testified that he was tired and forgot to perform the brake and lamp inspections on the two vehicles.

15. On January 24, 2019, an Accusation was filed in Case No. 77/17-20689, alleging that respondent was subject to disciplinary action because he violated Business and Professions Code sections 9889.16, and 9889.22, and California Code of Regulations, title 16, sections 3305, subdivision (a), 3316, subdivision (d)(2), and 3321, subdivision (c)(2). The Accusation also alleged that respondent was subject to disciplinary action because he committed acts involving dishonesty, fraud, or deceit, pursuant to Health and Safety Code section 44072.2.

16. The Accusation alleged causes to discipline A1 Smog's Automotive Repair Dealer license, Brake and Lamp licenses, and Smog Check Station license.

17. The Accusation alleged causes to discipline respondent's Smog Check Inspector License, Smog Check Repair Technician License, and Brake and Lamp Adjuster Licenses.

18. On April 1, 2020, respondent signed a Stipulated Revocation of License and Disciplinary Order, in which respondent agreed to the revocation of his Brake Adjuster License Number BA 135880, class C, and Lamp Adjuster License Number LA 135880, class A. In the Stipulated Revocation of License and Disciplinary Order, respondent admitted the truth of each charge and allegation stated in Accusation No. 77/17-20689. Respondent also stipulated that cause for discipline existed and that his Brake Adjuster License Number BA 135880, class C, and Lamp Adjuster License Number LA 135880, class A, would both be revoked.

19. On May 22, 2020, before the Director of the Department of Consumer Affairs, BAR, State of California, Case No. 77/17-20689, OAH No. 2019030253, a Stipulated Revocation of License and Disciplinary Order as to respondent was accepted and adopted by the Director of the Department of Consumer Affairs.

Respondent's Brake and Lamp Adjuster licenses were revoked. A1 Smog's four license were not disciplined. Respondent's Smog Check Inspector License and Smog Check Repair Technician License were not disciplined.

20. Respondent was ordered to send his licenses to BAR and to pay BAR its costs of investigation and enforcement, which amounted to \$3,879.04. Respondent was permitted to pay these costs in a payment plan approved by the Bureau. If respondent failed to pay the BAR costs as ordered, respondent will not be allowed to renew his Smog Check Inspector License and/or his Smog Check Repair Technician License until respondent paid costs in full.

21. Respondent has paid \$3,879.04 to BAR as costs.

### **Respondent's Evidence**

22. Respondent is married with three children, ages 25, 19, and 14. Respondent's wife is not employed. Respondent provides the sole support for himself, his wife, and his two youngest children.

23. Respondent offered 19 character-reference letters which attest to respondent's honesty during their interactions with respondent when he was providing auto repair or smog testing services. However, none of these persons was aware that BAR previously revoked two of respondent's licenses.

24. Respondent has performed smog inspections and tests since 1998. It was established that he has performed these procedures properly and honestly. Respondent's Smog Check Inspector License and Smog Check Repair Technician License are active and unrestricted.

## **LEGAL CONCLUSIONS**

1. Pursuant to Business and Professions Code section 10177, subdivisions (f), (g), and (h), the DRE Commissioner may deny an application for licensure if the applicant has done any of the following:

- Had a license issued by another State agency disciplined for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license (subdivision f);
- Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license (subdivision g);
- Engaged in conduct that constitutes fraud or dishonest dealing (subdivision (j)).

2. Cause exists to deny respondent's application pursuant to Business and Professions Code section 10177, subdivisions (f), (g), and (j), because BAR previously revoked respondent's Brake and Lamp Adjuster licenses and respondent, on two occasions, committed acts involving dishonesty, fraud, or deceit by charging customers for work which he did not perform.

3. Government Code section 11425.50 states, in pertinent part, that an ALJ may use his or her experience, technical competence, and specialized knowledge in evaluating evidence. The undersigned ALJ has presided over administrative hearings for more than 10 years, including many matters involving BAR applicants or licensees. Legal Conclusions 4 and 5 are based on the ALJ's experience and specialized knowledge.



4. BAR's initially alleged (Accusation) causes to discipline A1 Smog's four licenses and respondent's four licenses. However, the matter was resolved when respondent's Brake and Lamp Adjuster licenses were revoked. The other six licenses at issue were not disciplined. Respondent currently holds an unrestricted Smog Check Inspector License and Smog Check Repair Technician License. A1 Smog's four licenses were not disciplined.

5. Therefore, while respondent stipulated to having committed acts of dishonesty, fraud, or deceit, BAR determined that public protection was sufficiently protected by the revocation of respondent's Brake Adjuster and Lamp Adjuster licenses. If BAR had determined that respondent was likely to commit further dishonest acts, BAR almost certainly would not have agreed to allow A1 Smog's four licenses, and respondent's Smog Check Inspector License and Smog Check Repair Technician License, to remain active and unrestricted.

6. Respondent has performed smog inspections and tests for over 20 years without any history of discipline. His customers believe he is honest, and his misconduct was limited to brake and lamp inspections, acts which he rarely performed as a BAR license. A restricted real estate salesperson's license will allow respondent's broker and the DRE to closely monitor his actions as a real estate licensee and will sufficiently protect the public.

## **ORDER**

Respondent Xuoi Huynh's application for a real estate salesperson license is denied; provided, however, that a restricted real estate salesperson's 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 Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of the Business and Professions 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. 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 license and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

DATE: 01/05/2022

  
Christopher Ruiz (Jan 5, 2022 11:39 PST)

CHRIS RUIZ

Administrative Law Judge

Office of Administrative Hearings