

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROBERT DUC HA,

Respondent.

Case Number 963-1975

OAH Number L2003110056

DECISION

The attached proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on June 25, 2004.

IT IS SO ORDERED this 25 day of June 2004.

DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

By _____

lcp

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In the Matter of the Accusation Against:

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PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Los Angeles Office of Administrative Hearings, at Los Angeles, California on March 30, 2004.

Corporations Counsel Michelle Lipton represented complainant.

Respondent, Robert Duc Ha, personally appeared and represented himself.

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. Demetrios A. Boutris ("complainant") filed the Accusation against respondent while acting in his official capacity as California Corporations Commissioner, Department of Corporations ("the department"), State of California.

2. On July 28, 2003, Sunrise Team Escrow, Inc. ("Sunrise"), an escrow agent licensed by the department pursuant to California Escrow Law (California Financial Code section 17000 et seq.), submitted an employment application and Statement of Identity for Respondent indicating that respondent was employed with Sunrise as an escrow assistant.

In the "Statement of Identity and Questionnaire" form completed by respondent, respondent indicated, in answer to question number 5 that he had been convicted of a misdemeanor or felony other than minor traffic violations. In the section of the questionnaire where it asks for the details of the conviction(s) respondent wrote "SEE ATTACHED MINUTE ORDER". The copy of the Minute Order from the criminal proceedings, which respondent appended to his application/questionnaire, reflected that on August 31, 1999 respondent's motion to withdraw his guilty plea to counts 1-5, 7&9, was granted, the court deemed the case a misdemeanor and ordered the case dismissed pursuant to California Penal Code

section 1203.4. The Minute Order does not reflect the nature of respondent's conviction(s).

3. On November 30, 1990, respondent suffered the following convictions:

1. Three counts of violating California Penal Code sections 459/460.2/461.2 (Second Degree Burglary);
2. Two Counts of violating California Vehicle Code section 10851 (Taking a Vehicle Without the Owner's Consent);
3. One Count of violating Penal Code section 487(a) (Grand Theft: Vehicles); and,
4. One Count of violating Penal Code section 496.1 (Receiving Stolen Property)

All seven of respondent's convictions were for felonies involving moral turpitude and are for crimes substantially related to the qualifications, functions and duties of a person engaged in the escrow business. Furthermore, respondent's convictions are for offenses identified in California Financial Code section 17414.1, subdivision (b). Although respondent has had his convictions expunged pursuant to Penal Code section 1203.4, that expungement does not prevent complainant from barring respondent from employment in an escrow business. (See Financial Code section 17423)

4. On October 24, 2003, complainant issued and filed a "Notice of Intention to Issue Order Pursuant to California Financial Code Section 17423 (Bar From Employment, Management or Control of Any Escrow Agent)" and an Accusation against respondent. The Notice and Accusation were filed based on respondent's 1990 criminal convictions.

5. Respondent timely requested a hearing and the instant hearing ensued.

6. Respondent appeared at the hearing and testified on his own behalf. Other than respondent's own testimony and the minute order revealing that his convictions have been expunged, respondent presented no other evidence substantiating his claim that he is rehabilitated and can be trusted to work for an escrow business.

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LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for upholding an order pursuant to Financial Code section 17423 barring respondent from employment in the escrow business because, as described in Finding 3, respondent was convicted of crimes which are specified in subdivision (b) of Section 17414.1 and, which are substantially related to the qualifications, functions and duties of a person engaged in the escrow business.

2. Respondent presented insufficient evidence in mitigation and of rehabilitation to instill confidence in the ALJ that it would not be against the public interests to allow respondent to work in the Escrow business. Given the nature and number of respondent's convictions, respondent must present substantial and compelling evidence of rehabilitation (e.g. character witnesses, proof of community service activities, etc.) Respondent did not present such evidence, therefore, complainant's order is upheld.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent is barred from any position of employment, management or control of any escrow agent. Said bar precludes respondent from engaging in any escrow processing activities, including, but not limited to, disbursing any trust funds in an escrow agent's possession, custody or control.

Dated: April 17, 2004.

ROY W. HEWITT
Administrttive Law Judge
Office of Administrative Hearings