

BEFORE THE
INSURANCE COMMISSIONER
STATE OF CALIFORNIA

In the Matter of the Application of:

HUNG THANH NGUYEN,

Respondent.

File No. LBB 6829-AP

OAH No. 2014050316

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on June 3, 2014, in Oakland, California.

Harriet Rosen, Senior Staff Counsel, represented the Insurance Commissioner.

Respondent Hung Thanh Nguyen represented himself.

The record closed on June 3, 2014.

FACTUAL FINDINGS

1. On August 26, 2013, Hung Thanh Nguyen (Respondent) filed an application with the Insurance Commissioner for a license to act as a property broker-agent and as a casualty broker-agent in the State of California. The application is now pending and no license has been issued.

Criminal convictions

2. On August 20, 2002, in the Santa Clara County Superior Court, Respondent was convicted, by his plea of guilty, of a misdemeanor violation of Vehicle Code section 12500, subdivision (a), unlicensed driver. The offense occurred on January 21, 2002. Imposition of sentence was suspended, and Respondent was placed on court probation for 36 months. The court minutes indicate that Respondent presented proof of a driver's license to the court and that a fine of \$100 was paid in full. On December 21, 2007, the conviction was dismissed pursuant to Penal Code section 1203.4.

3. The only evidence concerning the facts and circumstances of the 2002 conviction was Respondent's testimony. He stated that he did not really remember why he

was not licensed at that time, but that he believes he had failed to pay some parking tickets. Respondent asserts that he was only unlicensed for a few months.

4. On February 19, 2003, in the Santa Clara County Superior Court, Respondent was convicted, by his plea of nolo contendere, of a felony violation of Penal Code section 487, subdivision (a), grand theft. The offense occurred on January 2, 2002. Imposition of sentence was suspended, and Respondent was placed on formal probation for five years. The court minutes are difficult to read, but the probation terms included payment of fines and fees, entering and completing a counseling program for compulsive gambling and serving 150 days in county jail.

5. On January 10, 2008, Respondent's petition for record clearance pursuant to Penal Code section 1203.4 was granted, but his petition for record reduction (from felony to misdemeanor) pursuant to Penal Code section 17 was denied. The Probation Department recommended against granting both requests, based on Respondent's probation violation for failure to report to his probation officer as directed, failure to complete the gambling condition and failure to pay towards victim restitution.

On November 17, 2011, Respondent's petition to reduce the conviction to a misdemeanor pursuant to Penal Code section 17, subdivision (b), was granted. Although the court records do not reflect the payments, Respondent asserts that he paid \$15,000 in restitution and that his probation term was accordingly reduced to three years.

6. The 2003 conviction is based upon Respondent's conduct between January 2 and 9, 2002. He deposited several forged and fictitious checks at Hewlett Packard Credit Union's ATM machines, and then made withdrawals in various amounts.

An investigative report describes Respondent's activities as part of a gang-related counterfeiting operation. It states:

Other information developed is that people are being recruited at coffee shops and restaurants frequented by Vietnamese affiliated gang members. Persons are also being recruited at illegal street races or as a result of a lost bet associated with street racing. The persons recruiting, convince others to either deposit counterfeit checks into their bank accounts via ATM transactions or letting the recruiters make the deposits using the others ATM card and pin number. The "mules" are then instructed to withdraw nearly all the funds either in cash and/or a legitimate cashier's check. The mule gets to keep from \$500 up to 50% of the take as his or her payment. Losses to the banks are approximately 60 to 80% of the total amount of checks being deposited. As of this date, it is estimated that over \$1.5 million in counterfeit checks have been passed in Santa Clara and surrounding counties.

Application

7. The application for the insurance sales license completed by Respondent includes questions that ask if the applicant has been convicted of a felony and of a misdemeanor. Following the questions, there are explanations that state that convictions that have been dismissed pursuant to Penal Code section 1203.4 must still be disclosed. Nonetheless, Respondent answered “no” to both questions; the answers were false.

Respondent’s evidence

8. Respondent submitted a written statement with his application and testified at hearing. The written statement is very difficult to follow, but in essence, Respondent wrote that he did not intend to withhold information on his application. As to the 2002 conviction, he asserts that he simply forgot about it, given the arrest and conviction in 2003. Respondent also wrote that he has learned from the mistakes he made in his early twenties, and is now a better man with better character.

9. Respondent testified that his convictions are the result of bad choices he made over ten years ago. He “gambled every day,” either on sports or at a casino. He needed money, and therefore agreed to the check cashing activities when approached by a friend of a friend. He is now 31, is married, and has three children. Respondent’s wife has an Allstate agency, where he also works. He would like to be licensed so that he could also sell insurance. Respondent previously worked as an account manager for a phone company and owned a phone store.

10. Respondent appeared to be testifying reluctantly. He was not forthcoming about details, particularly surrounding his theft conviction. He offered no evidence other than his testimony.

LEGAL CONCLUSIONS

1. Cause for license denial exists pursuant to Insurance Code section 1668, subdivision (b) (licensure against the public interest), subdivision (e) (lack of integrity), subdivision (m)(3) (crime involving dishonesty), and subdivision (i) (fraudulent act), by reason of the matters set forth in Findings 4 through 6. Respondent’s conviction for theft is substantially related to the practice of insurance pursuant to California Code of Regulations, title 10, sections 2183.2, subdivision (b)(1), and 2183.2, subdivision (b)(3).

2. Respondent’s conviction for driving without a valid license does not establish cause for denial. It is not a conviction that is substantially related to the practice of insurance, and a total of two convictions, with one a minor Vehicle Code violation, does not constitute a pattern of repeated criminal conduct such as would “demonstrate a pattern of repeated and willful disregard for the law which is substantially related to the qualifications,

functions, or duties of an insurance licensee” under California Code of Regulations, title 10, section 2183.2, subdivision (b)(8).

3. Cause for denial exists pursuant to Insurance Code section 1668, subdivision (h) (willful misrepresentation in application), by reason of the matters set forth in Finding 2 through 7.

4. As cause for denial has been established, Respondent bears the burden of proving that he is rehabilitated and does not present a threat to the insurance-buying public. California Code of Regulations, title 10, section 2184, provides that the criteria to be used to evaluate rehabilitation are as follows:

(a) Nature and severity of the act, misconduct, or omission;

(b) Total criminal record;

(c) The time that has elapsed since commission of the act, misconduct, or omission; however, the mere passage of time without unlawful or wrongful activity is not alone sufficient to establish rehabilitation;

(d) Whether the licensee or applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or applicant; however, termination of probation or parole or obtaining a Penal Code Section 1203.4 expungement of the conviction, or other comparable orders of a court, including federal courts, are not alone sufficient evidence of rehabilitation;

(e) Whether the licensee or applicant has made any restitution or done anything to recompense the injured party or to alleviate the wrong or damage caused by the act, misconduct, or omission;

(f) Significant and/or conscientious involvement in community or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

5. Respondent’s criminal conviction for grand theft is very relevant to the insurance field. It is acknowledged that the conviction is now over ten years old, and Respondent asserts he has changed greatly in the intervening time, but the criteria provide that passage of time alone is not sufficient to establish rehabilitation. Respondent presented no corroboration of his assertions that he has changed, and it is concluded that he has not met his burden. It would not be in the public interest to grant him an insurance license, even on a restricted basis, at this time.

ORDER

Respondent Hung Thanh Nguyen's application for a license to act as a property broker-agent and as a casualty broker-agent is denied.

DATED: June 5, 2014

_____/S/_____
MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings