

1 I have considered Respondent's Petition and the
2 evidence submitted in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate
6 salesperson license and that it would not be against the public
7 interest to issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 Petition for removal of restrictions is granted and that a real
10 estate salesperson license be issued to Respondent subject to the
11 following understanding and conditions:

12 1. The license issued pursuant to this order shall be
13 deemed to be the first renewal of Respondent's real estate
14 salesperson license for the purpose of applying the provisions of
15 Section 10153.4.

16 2. Within nine (9) months from the date of this order
17 Respondent shall:

18 (a) Submit a completed application and pay the
19 appropriate fee for a real estate salesperson license, and

20 (b) Submit evidence of having taken and successfully
21 completed the courses specified in paragraphs (1) to (4)
22 inclusive of subdivision (a) of Section 10170.5 of the Real
23 Estate Law for renewal of a real estate license.

24 3. Upon renewal of the license issued pursuant to this
25 order, Respondent shall submit evidence of having taken and
26 successfully completed the continuing education requirements of

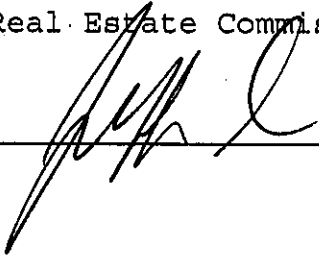
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1 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
2 real estate license..

3 This Order shall become effective immediately.

4 IT IS SO ORDERED 1-27-, 2007.

5 JEFF DAVI
6 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

BRIAN NG,

Respondent.

Case No. H-8275 SF

OAH No. N2003020207

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on June 25, 2003, in Oakland, California.

Complainant Les R. Bettencourt was represented by Department of Real Estate Counsel Michael B. Rich.

Respondent Brian Ng was present and represented by Edgardo Gonzalez, Esq.

The case was submitted for decision on June 25, 2003.

FACTUAL FINDINGS

1. Complainant, Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California, made the Statement of Issues in his official capacity and not otherwise.

2. Brian Ng (respondent) made application to the Department of Real Estate of the State of California (Department) for a real estate salesperson license on July 25, 2002. He did so with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of section 10153.4 of the California Business and Professions Code.

3. On November 7, 1996, in the Santa Barbara Municipal Court, County of Santa Barbara, State of California (Case No. 464662), respondent was convicted of a violation of three counts of section 475 of the California Penal Code (Possession of Counterfeit Instrument). This is a crime involving moral turpitude that bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

Respondent was sentenced to serve three months in county jail, imposition of sentence suspended, with placement on three years unsupervised probation on specified terms and conditions including payment of \$125 to a victim restitution fund. Respondent satisfactorily completed his criminal probation and on November 30, 2001, his conviction was set aside, a plea of not guilty entered and the complaint was dismissed pursuant to Penal Code section 1203.4/1203.4a.

4. On April 23, 1997, in the Municipal Court of California, Santa Clara County Judicial District (Case No. C9726327), respondent was convicted of a violation of two counts of section 484(g) of the California Penal Code (Fraudulent Use of Access Card). This is a crime involving moral turpitude that bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

Respondent was sentenced to serve 25 days (weekend work) and placed on two years Court probation, a condition of which was payment of a \$100 restitution fine. Respondent satisfactorily completed his criminal probation and on February 11, 2002, his conviction was set aside and vacated and a plea of not guilty entered and the complaint was dismissed under Penal Code section 1203.4.

5. The circumstances of respondent's 1996 conviction were that he and a friend visited a number of stores in the Santa Barbara area and made small purchases with counterfeit twenty dollar bills from which change could be obtained. Respondent estimates that the two had close to \$400 in counterfeit bills. Respondent knew that they were counterfeit bills. Businesses where counterfeit bills were tendered included Lucky, Long's Drug, Orchard Garden & Supply, Santa Barbara Candy Company, Haagen Daz Ice Cream, Mrs. Field's Cookie, See's Candies and the Natural Store. When the two were arrested on May 25, 1996, a paper bag containing \$361 in various denominations was recovered.

The circumstances of the 1997 conviction were that respondent was employed at the Sears Oakridge store in San Jose. He obtained a name and credit card number from his mother's business and provided this information to a friend. This friend purchased certain items from Sears over the telephone using this credit card information. After these items were received, respondent arranged for another party to return these items to Sears on a day that he was working so that he (respondent) could credit \$495.51 towards the original purchase, but to this other person's credit card account instead. The attempt was made on July 26, 1996, and he was stopped and arrested that same date.

The arrests leading to the two convictions were two months apart.

6. Respondent was 19 at the time of his first conviction. A high school friend had obtained the counterfeit bills from a source unknown to respondent. This same friend was also involved peripherally in the Sears incident. Respondent has no

more to do with this individual. He attributes the criminal convictions to bad judgment and not being too smart. He now knows there are consequences to such actions, the importance of right and wrong behavior, and what it takes to be a better person. He believes he has learned a hard lesson and that poor decisions made during his "young naïve mindset" have contributed to making him a stronger and mature citizen. He notes that although he has only himself to blame, "I realized that the environment of so called friends I was in would not lead me in the direction I wanted."

Respondent studied management information system networking in college before leaving to pursue real estate work full time. He is 20 units shy of completing his degree requirements. He has experience as a computer network engineer, having worked with Telos Field Engineering and Decision One, companies that contracted with the State of California and Sacramento County to service computer networks. Respondent continues to setup home wireless networks on his own. He would like to work full time in real estate but also has the option of returning to computer networking work if there is a downturn in the real estate market.

7. Respondent finds real estate to be interesting and a field in which he is comfortable. He wants to pursue a career in real estate with Century 21 Alpha. Respondent initially attended training classes at Century 21 and in November 2002 began working under the supervision of Thao Dang. His duties revolve around upgrading office technology, remodeling and incorporating database systems and helping with flyers. He also answers telephones and assists agents by running errands and performing other tasks. Edward Zimbrick is the president of Century 21 Alpha. He is aware of respondent's two convictions and he is willing to hire him as a sales associate and to carefully supervise and manage him and his transactions. Management at Century 21 Alpha believe respondent to be honest. They are unaware of any complaints relating to his moral character and they value his background in computers and admire his work ethic. Respondent has fully disclosed his criminal history to his employer.

8. Respondent is raising a daughter, age 5, as a single parent. His mother describes him as a responsible parent. She has observed positive changes in her son from the time of his convictions and believes that he has taken full responsibility for his actions.

Also considered were ten reference letters submitted on respondent's behalf. It is apparent that he is connected with and well regarded by responsible real estate professionals and longstanding friends of his family and community who know him quite well. Such references speak to his maturity and also his success in aligning himself with responsible individuals to whom he is now accountable.

9. Respondent was convicted of two serious offenses and it is incumbent upon him to make a strong showing of rehabilitation in this case. The crimes involved

dishonest acts and honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualifications to be a real estate licensee. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

He has satisfactorily demonstrated a change in attitude from that which existed at the time of his arrest and conviction. Six years have passed since his most recent conviction and by all accounts he has matured and conducted himself responsibly at work and at home. He is responsible for raising a five year old daughter alone, and with the assistance of his own parents he has demonstrated stability of family life and fulfillment of parental responsibilities. His criminal convictions have been expunged. He satisfied all terms and conditions of his criminal probation, including payment into restitution funds. He has had no contact with those connected with his crimes, and he has entered into new and different business relationships with those in the real estate industry. Importantly, he has gained the confidence and trust of those at Century 21 Alpha who now stand ready to supervise his activities as a real estate licensee. In particular, Mr. Zimbrick has been licensed approximately thirty years as a real estate broker. He gave careful thought to and takes very seriously his obligation to supervise all respondent's activities. Respondent is in a very good situation where he will be held accountable and hopefully develop professionally. Sufficient time has passed from the time of his conviction for him to demonstrate that he is substantially rehabilitated. He has done so.

The above matters having been considered, it would not be contrary to the public interest or welfare to issue him a restricted real estate salesperson license at this time.

LEGAL CONCLUSIONS

1. Cause exists for denial of respondent's application under Business and Professions Code sections 480(a) and 10177(b), by reason of the matters set forth in Findings 3 and 4. Respondent was convicted of crimes involving moral turpitude that bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

2. The matters set forth in Findings 5 through 9 were considered in making the following Order. It would not be contrary to the public interest or welfare to issue respondent a restricted real estate salesperson license at this time.

ORDER

The application of Brian Ng for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson 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 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 licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.


4. Respondent's restricted real estate salesperson license is issued subject to the requirements of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance.

Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.

5. Pursuant to section 10154, if respondent has not satisfied the requirements for an unqualified license under section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED:

July 11, 2003



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

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

FILED
APR 16 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

Shelly Clay

BRIAN NG,

} Case No. H-8275 SF

} OAH No. N2003020207

Respondent

**FIRST CONTINUED
NOTICE OF HEARING ON APPLICATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on WEDNESDAY--JUNE 25, 2003, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearing within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: APRIL 16, 2003

By *Michael B. Rich*
MICHAEL B. RICH, Counsel

FILED

JAN 29 2003

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Application of

BRIAN NG,

Case No. H-8275 SF

OAH No.

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at

**THE OFFICE OF ADMINISTRATIVE HEARINGS
THE ELIHU HARRIS STATE BUILDING
1515 CLAY STREET, SUITE 206
OAKLAND, CALIFORNIA 94612**

on **APRIL 2, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

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DEPARTMENT OF REAL ESTATE

Dated: JANUARY 24, 2003

By Michael B. Rich
MICHAEL B. RICH, COUNSEL
RE 500 (Rev. 8/97)

1 LARRY A. ALAMAO, Counsel
State Bar No. 47379
2 Department of Real Estate
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
JAN - 3 2003

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13 BRIAN NG,) NO. H-8275 SF
14 Respondent.) STATEMENT OF ISSUES
15 _____)

16 The Complainant, LES R. BETTENCOURT, a Deputy Real
17 Estate Commissioner of the State of California, for Statement of
18 Issues against BRIAN NG (hereinafter "Respondent"), is informed
19 and alleges as follows:

20 I

21 Respondent made application to the Department of Real
22 Estate of the State of California for a real estate salesperson
23 license on or about July 25, 2002, with the knowledge and
24 understanding that any license issued as a result of said
25 application would be subject to the conditions of Section 10153.4
26 of the Business and Professions Code.

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II

Complainant, LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

On or about November 7, 1996, in the Municipal Court, County of Santa Barbara, Respondent was convicted of a violation of three counts of Section 475 of the California Penal Code (Possession of Counterfeit Instrument), crimes involving moral turpitude which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV


On or about April 23, 1997, in the Municipal Court, County of Santa Clara, Respondent was convicted of a violation of two counts of Section 484(g) of the California Penal Code (Fraudulent Use of Access Card), crimes involving moral turpitude which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

V

The crimes of which Respondent was convicted, as alleged in Paragraphs III and IV above, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

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WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, and for such other and further relief as may be proper under other provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 27th day of November, 2002.