

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

BERTHA A. FREGOSO,

Respondent.

Case No. H-8355 SF

OAH No. N2003040978

PROPOSED DECISION

This matter was heard before Robert R. Coffman, Administrative Law Judge, Office of Administrative Hearings, State of California, in Oakland, California, on June 16, 2003.

The respondent, Bertha A Fregoso, was personally present and was represented by her attorney, Steven Clark.

Larry A. Alamao, Counsel for the Department of Real Estate, represented the complainant, Les R. Bettencourt.

FACTUAL FINDINGS

1. Les R. Bettencourt made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. Respondent made application to the Department of Real Estate for a real estate salesperson license on or about July 15, 2002, with the knowledge and understanding that any license issued as a result of her application would be subject to the conditions of section 10153.4 of the Business and Professions Code.
3. On or about August 5, 1998, in the Superior Court of the State of California, County of Santa Clara, respondent was convicted of violating Penal Code section 182 (a)(1) (conspiracy).
4. The circumstances of the above conviction were that in 1997, while employed as the manager of a San Jose restaurant, respondent agreed to allow a restaurant employee to use her automobile to pick up several boxes of materials at an Oakland

store. He paid respondent \$50.00 for her help. Respondent accompanied the employee to the store and allowed him to use her driver's license when he represented he needed one to purchase the products. When she later questioned the employee about the products he had purchased and why a driver's license was necessary, he told her not to tell anyone or those involved would kill her family. She became very frightened and told no one. She accompanied the employee to the same store on a second occasion and was paid another \$50.00. The items purchased by the employee were chemicals used for the manufacture of methamphetamines.

When a law enforcement officer subsequently contacted respondent she fully cooperated with him.

5. On the above conviction respondent was sentenced to three years probation on conditions she pay a fine and serve a term in the county jail. She served 30 days on a home electronic monitoring program.

6. Respondent is a single mother and sole support for her two children. She has taken approximately two years of college courses.

Respondent was a licensed cosmetologist in the 1980s. During the 1990s she was employed as an administrative assistant to the chair of the Business and Computer Science Department, National Hispanic College in Santa Clara, as a bookkeeper, as a restaurant manager, and as an assistant auditor and bookkeeper.

The past two years she has been employed by a thirty-salesperson real estate and financial services company in San Jose, serving as the assistant to several salespersons. Her duties include handling escrow deposits, working with title companies and assisting with loans the company makes to purchasers of real property. She especially enjoys the contact she has with the public in her present position and wants very much to embark on a career in real estate.

7. Respondent is very contrite over her conviction and the conduct that resulted in the conviction. Based on respondent's testimony including her appearance, demeanor, manner and sincerity, it is found that she is a very credible and honest person, as well as a responsible person in her personal and professional life. This finding is supplemented by letters of recommendation submitted in evidence on her behalf by the Chair of the Business Department at National Hispanic University, who commends her as a mature, responsible, dependable and reliable employee with a great work ethic, and a trustworthy person; by an attorney/instructor she worked for who attests to her honesty and integrity, and her high ethical standards; by two realtors she currently works for at ST Real Estate and Financial Services, Inc., who find her to be professional, honest, and of the highest ethical standards; and by the President of ST Real Estate and Financial Services, who attests to respondent's professionalism and responsibility as an employee of his company.

Respondent's representations about her involvement in the criminal matter and her testimony that she provided full cooperation with law enforcement agencies who were investigating the manufacture and distribution of methamphetamine, were supplemented by a letter from the special agent supervisor, Bureau of Narcotics Enforcement, who arrested her in 1997. He states she was extremely cooperative in the investigation, that her involvement in the criminal activity was very minimal and limited to assisting another in purchasing chemicals which could be used in making methamphetamine. Her cooperation led to the arrest of those involved in illegal drug activity.

8. Respondent has successfully completed her court-imposed probation. On January 17, 2002, her conviction was dismissed under Penal Code section 1203.4.

LEGAL CONCLUSIONS

1. Cause was established to deny the application under Business and Professions Code sections 480(a) and 10177(b) in that respondent was convicted of a crime which, by its circumstances, involves moral turpitude and bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee.

2. When respondent first did a favor for her employee she had no knowledge that he was purchasing items for illegal use or that he was involved in any illegal activity. When she became suspicious he threatened harm to her children, so she continued to assist him. Under these circumstances and with due consideration given to the facts set forth in Findings 7 and 8, issuance of a restricted license with conditions would not be against the public interest.

ORDER


Respondent's application 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 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; or

- (b) 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.
2. 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 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:
- (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 performance by the restricted licensee relating to activities for which a real estate license is required.
4. Respondent's restricted real estate salesperson license is issued subject to the provisions 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 the 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: 7-7-03


ROBERT R. COFFMAN
Administrative Law Judge
Office of Administrative Hearings

FILED
APR 22 2003

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Application of

BERTHA A. FREGOSO,

} Case No. H-8355 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 **JUNE 16, 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you 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 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 Larry Alamao
LARRY A. ALAMAO, 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

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DEPARTMENT OF REAL ESTATE

By 

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

11 * * *

12 In the Matter of the Application of)
13 BERTHA A. FREGOSO,) NO. H-8355 SF
14 Respondent.) STATEMENT OF ISSUES

16 The Complainant, LES R. BETTENCOURT, a Deputy Real
17 Estate Commissioner of the State of California, for Statement of
18 Issues against BERTHA A. FREGOSO (hereinafter "Respondent"), is
19 informed 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 15, 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 August 5, 1998, in the Superior Court, County of Santa Clara, Respondent was convicted of a violation of Section 182(a)(1) of the California Penal Code (Conspiracy), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, as alleged in Paragraph III, constitutes 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.

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 25th day of February, 2003.