

FILED
SEP 10 2003

Kathleen Contreras

N-2003060199

Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the matter of the Application of:

SHERRON ALAINE HOGG,

Respondent.

Case No. H-8433 SF

OAH No. N2003060199

PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 15, 2003.

Larry A. Alamo, Assistant Chief Counsel, represented the complainant, Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

Sherron Elaine Hogg, the respondent, appeared in propria persona.

FACTUAL FINDINGS

1. By an application that the Department of Real Estate received on August 12, 2002, respondent, Sherron Elaine Hogg, applied for licensure as a real estate salesperson. In her application, respondent disclosed that she had been convicted of a felony. Because of that conviction, the department denied her application. And she appeals.
2. On February 23, 1998, in the United States District Court for the Northern District of California, respondent was convicted of a violation of subdivision (a)(2) of section 1029 of title 18 of the United States Code, aiding and abetting in the knowing use of an unauthorized access device.
3. The court suspended the imposition of sentence and placed respondent on probation for five years. Among the conditions of probation were the following: the court required respondent to be in home detention for three months except for purposes of employment, attending church, and caring for her children. The court required respondent to pay restitution of \$37,332, refrain from employment in any fiduciary position, and perform 100 hours of community service.
4. The incident that gave rise to respondent's conviction occurred in 1996 at a time when she was employed as a teller at a branch of Wells Fargo Bank. A man who was respondent's boyfriend at the time asked her to do a favor for a friend of his. The friend had 26 stolen credit cards. He wanted to know which of them had not been reported as stolen so

that he would know which ones he could use with the least risk of being caught. Respondent checked the cards against the bank's records, determined which ones had not been reported as stolen, and passed on that information.

5. The crime of which respondent was convicted is one involving moral turpitude. The crime of which respondent was convicted is one that is substantially related to the qualifications, functions, or duties of the licensed activity.

6. Respondent has complied with all of the conditions of her criminal probation, and her probation terminated on February 22, 2003. Daniel A. Zurita, Supervising U.S. Probation Officer, has been a probation officer for 13 years and supervised respondent's probation from February of 1998 through July of 2001. In a letter dated July 9, 2003, Mr. Zurita said that respondent completed the home detention on June 7, 1998, and completed the 100 hours of community service on June 1, 1999. She pays \$50 or more per month on the restitution. The court permitted her probation to terminate in spite of the fact that she still owed a balance of approximately \$6,000 in restitution. Mr. Zurita said that respondent's performance as a probationer was exemplary. She was responsible and a good model for her children. As a mother, daughter, and student, she was diligent. She accepted challenges, overcame obstacles, and persevered in her endeavors.

7. Respondent has continued to make payments on the restitution, has paid a total of \$32,655, and currently owes \$4,677.

8. Respondent holds a license from the Department of Social Services as a day care provider. As a result of respondent's conviction, the Department of Social Services placed that license on administrative probation. Her administrative probation is scheduled to terminate on August 24, 2003.

9. During the period of respondent's criminal probation, she attended Merit College and completed a two year associate of arts degree with an emphasis on early childhood development. She also took a real estate course, earned an A in the course, and passed the state licensing examination.

10. Respondent declares that the incident that gave rise to her conviction was the only time she has ever engaged in criminal conduct. She is remorseful about having contributed to the disruption of the lives of the credit card holders whose stolen cards were used. She says that each time she has made a restitution payment she has recalled that she contributed to disrupting those people's lives.

11. Respondent has two sons, one seven and one twelve years old. They have always lived with respondent, and she has always supported them.

12. Two years ago respondent married David L. Harris, and in January of 2002, they bought a house. Mr. Harris wrote a letter of support dated July 14, 2003. He said that

he has known respondent for four years and that she has been a diligent mother, daughter, and student. She is determined and motivated.

13. Also in January of 2002, respondent began working as an assistant to the broker for Help-U-Sell Eastbay Real Estate. Anthony Wright, President of Help-U-Sell, wrote a letter of recommendation dated July 11, 2003. He says that respondent, in her position as an assistant, has demonstrated leadership and knowledge and that he would be pleased to have her work in his office as a licensed realtor.

14. Since starting to work at Help-U-Sell, respondent has operated her day care only as a pre-school and after school facility. She feeds the children breakfast, takes them to school, goes to work at Help-U-Sell, picks up the children after school, keeps them until 6:00, and returns to work at Help-U-Sell. In addition to operating her day care business and working as an assistant to a realtor, respondent devotes time to her sons. One wrestles and plays football. The other performs with a hip hop dance group. Respondent provides transportation for the boys and assists the dance instructor. Respondent is a member of the Oakland Licensed Day Care Providers Association. Until recently, she was active in that organization. Recently, however, she has been concentrating on trying to become established in the real estate business.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 2 through 5, it is determined that respondent has been convicted of a crime that involves moral turpitude and that is substantially related to the qualifications, functions, or duties of the licensed activity. Thus, pursuant to (a) of section 480 of the Business and Professions Code and subdivision (b) of section 10177 of the Business and Professions Code, there are grounds to deny her application for a real estate license.

2. There is evidence, however, that respondent has made substantial progress toward rehabilitation. Respondent has complied with all of the conditions of her criminal probation except that she still owes a balance of \$4,677 in restitution. She pays \$50 or more per month on the restitution and has paid a total of \$32,655. The court permitted her probation to terminate in spite of the fact that she was still making payments on the restitution. Her probation terminated on February 22, 2003. Mr. Zurita, one of respondent's probation officers, praised respondent highly. He said that respondent's performance as a probationer was exemplary and that she was responsible and diligent. She accepted challenges, overcame obstacles, and persevered in her endeavors. During the period of respondent's criminal probation, she completed a two year associate of arts degree. She also took a real estate course and passed the state licensing examination. Respondent is remorseful. Respondent has been responsible in providing for her two sons. Respondent's husband says that she has been a diligent mother, daughter, and student. He says, also, that she is determined and motivated. Respondent's current employer says that respondent, in her position as a real estate assistant, has demonstrated leadership and knowledge and that

he would be pleased to have her work in his office as a licensed realtor. Thus, there is convincing evidence that respondent has made truly substantial progress toward rehabilitation. It would not be against the public interest for respondent to hold a salesperson license so long as the license is restricted by certain conditions.

ORDER


The application of respondent, Sherron Elaine Hogg, for a real estate salesperson license is denied. The department, however, shall issue a restricted real estate salesperson license to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license 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, which are 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. By an appropriate order, the real estate commissioner may suspend the right to exercise any privileges granted under this restricted license in the event respondent is convicted of or pleads nolo contendere to charges of a crime that is substantially related to respondent's fitness or capacity as a real estate licensee. By an appropriate order, the commissioner may suspend the right to exercise any privileges granted under this restricted license in the event the commissioner receives evidence that respondent has violated provisions of the California real estate law, the subdivided lands law, regulations of the 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.

3. With respondent's application for license, or with any application to transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing broker on form RE 552 (Rev. 4/88), approved by the Department of Real Estate, in which the employing broker shall certify that he or she has read this decision, will carefully review all transaction documents respondent prepares, and will exercise close supervision over respondent's performance of all acts for which a license is required.

DATED: August 22, 2003


ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

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

FILED
JUN - 6 2003

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Application of

SHERRON ALAINE HOGG,

Respondent

Case No. H-8433 SF

OAH No.

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

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

on **JULY 15, 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: JUNE 6, 2003

By Larry Alamao
LARRY A. ALAMAO, Counsel

RE 500 (Rev. 8/97)

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FILED
MAY 24 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 SHERRON ALAINE HOGG,) NO. H-8433 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 SHERRON ALAINE HOGG (hereinafter "Respondent"),
19 is 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 August 12, 2002.

24 II

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


1 III

2 On or about February 27, 1998, in the U. S. District
3 Court for the Northern District of California, Respondent was
4 convicted of violation of Title 18, United States Code, Section
5 1029(a)(2) and Title 18, United States Code, Section 2 (Knowing
6 Use of Unauthorized Access Device, Aiding and Abetting), a crime
7 involving moral turpitude which is substantially related under
8 Section 2910, Title 10, California Code of Regulations to the
9 qualifications, functions, or duties of a real estate licensee.

10 IV

11 The crime of which Respondent was convicted, as alleged
12 in Paragraph III, constitutes cause for denial of Respondent's
13 application for a real estate license under Sections 480(a) and
14 10177(b) of the California Business and Professions Code.

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

21
22 
23 LES R. BETTENCOURT
24 Deputy Real Estate Commissioner
25

26 Dated at Oakland, California,
27 this 13th day of May, 2003.