

# BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

11 In the Matter of the Application of 12 SHIRLEY ANN HORTON,

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No. H-34439 LA L-2007120384

Respondent.

#### DECISION AFTER REJECTION

16 This matter came on for hearing before Richard J. 17 Lopez, Administrative Law Judge of the Office of 18 Administrative Hearings (ALJ), at Los Angeles, California, on 19 January 23, 2008. Shari L. Sveningson, Real Estate Counsel, 20 represented the Complainant. Respondent appeared in person 21 and represented herself.

22 Oral and documentary evidence was received. The 23 record was closed on January 23, 2008. On February 5, 2008, the 24 ALJ submitted a Proposed Decision which I declined to adopt as 25 my Decision herein.

26 Pursuant to Section 11517(c) of the Government Code of 27 the State of California, Respondent was served with notice of my

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1 determination not to adopt the Proposed Decision of the ALJ 2 along with a copy of said Proposed Decision. Respondent was з notified that I would decide the case upon the record, the 4 transcript of proceedings held on January 23, 2008, and upon any 5 written argument offered by Respondent and Complainant. On 6 April 7, 2008, an Argument was submitted by Respondent. 7 Complainant submitted an Argument on April 11, 2008. 8 I have given careful consideration to the record in 9 this case, including the transcript of the proceedings of January 10 23, 2008. I have also considered the Arguments submitted by 11 Respondent and Complainant. The following shall constitute the Decision of the Real Estate Commissioner in this proceeding: 12 13 FACTUAL FINDINGS 14 1. Complainant, Robin Trujillo, made the Statement of 15 Issues in her official capacity as Deputy Real Estate 16 Commissioner of the State of California. 17 2. Application 18 On or about May 8, 2006, the Department received a 19 Salesperson License Application filed by Respondent for issuance of a real estate salesperson license. Respondent filed said 20 21 application with the understanding that any license issued would 22 be subject to the conditions of Business and Professions Code 23 Section 10153.4. In her application, Respondent disclosed that 24 she had been convicted of the violation of law described below. 25 3. Criminal Conviction 26

In 1994 Respondent was employed by United Airlines Employees' Credit Union (UAECU) as a teller. After a time she was

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1 promoted to a loan officer, a fiduciary position. While in that 2 position, beginning in 1995 and over a period of time, Respondent з issued a VISA credit card to her mother (without her mother's 4 knowledge) and caused loans to be issued to certain family 5 members (without their knowledge). Respondent used the credit and 6 loan proceeds for her own family and household expenses. 7 Eventually, a 1998 audit by UAECU revealed the on-going fraud and 8 Respondent was subsequently prosecuted, in that UAECU, the victim 9 of the fraud, suffered losses of approximately \$117,000. 10 Thereafter, on November 1, 2000, in the United States District 11 Court Northern District of Illinois, in Case No. 00-CR-796-1, 12 Respondent was convicted of violating Title 18 USC 1344 (Bank 13 Fraud), a felony and a crime involving moral turpitude.

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## Factors in Mitigation and Rehabilitation

4. As a result of the conviction, Respondent completed 16 a period of incarceration by serving eight months in jail and two months in a half-way house. Thereafter, she did successfully complete a three year term of formal probation (supervised release) and received an early termination of probation on August 21, 2004, having successfully complied with all terms of probation, including the payment of full restitution in the amount of \$117,000. As a result of the payment of restitution, a Satisfaction of Judgment was filed on April 11, 2003. Respondent has suffered no other conviction.

5. Respondent testified that the proceeds from her 26 wrongful conduct were used to undergird her family's previously 27

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affluent lifestyle during a period of economic downturn. She further testified that all family finances are presently handled by her husband, a real estate licensee. Respondent has been in a long term marriage and is the mother of three adult children and is grandmother to two children. ALJ Lopez held that Respondent has stability of family life and fulfills all parental and familial obligations.

6. Respondent took and passed the Real Estate Salesperson Examination. This lead ALJ Lopez to conclude that Respondent has completed formal training courses for economic self-improvement.

7. Respondent has been employed by Century 21, Lois
Lauer Realty, since October, 2001, as a transaction coordinator.
She was hired by Shirley Harry, Associate of Century 21, who has
knowledge of Respondent's conviction. The ALJ believed Ms. Harry
testified credibly regarding Respondent's work ethic, her
trustworthiness, and her competence and industry while an
employee of Century 21 over the last seven years.

8. The testimony of Respondent and Ms. Harry was that
Respondent's attitude has changed since the time of her
conviction. They claimed this was brought about by a number of
factors:

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• the support of her colleagues at Century 21, and the support of her family;

• the shame of the criminal proceeding which caused her to reorient her moral compass to the orientation that previously existed;

• the realization that what she did was dishonest, and contrition for that past, wrongful conduct.

9. ALJ Lopez believed that Respondent and Ms. Harry
were credible, open and honest in their testimony and Respondent
has worked with integrity since the conviction. Ms. Harry
testified that Century 21 will undertake the necessary
supervision over Respondent's real estate activities should she
receive a restricted license. The ALJ found that Respondent is,
at present, a socially and professionally responsible person.

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#### LEGAL CONCLUSIONS

Respondent's conviction for a crime of moral
 turpitude, as set forth in Finding 3, constitutes cause for
 denial of Respondent's application pursuant to Business and
 Professions Code section 10177, subdivision (b).

2. The crime set forth in Finding 3 is substantially related to the qualifications, functions and duties of a licensee of the Department under California Code of Regulations, Title 10, section 2910, subdivision (a)(1), (a)(4) and (a)(8). Respondent's conduct constitutes the appropriating of property belonging to another person; the employment of fraud and deceit to achieve an end; and the doing of an unlawful act that conferred a financial benefit upon Respondent. Therefore, cause

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exists for denial of Respondent's application under Business and Professions Code section 480, subdivision (a).

3. Cause exists for denial of Respondent's application pursuant to Business and Professions Code section 475, subdivision (a)(2) for a conviction of a crime, by reason of Finding 3.

# Criteria of Rehabilitation

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Respondent's application is governed by the 9 4. Criteria of Rehabilitation set forth in the California 10 Administrative Code, Section 2911, Title 10, Chapter 6, 11 California Code of Regulations ("Regulations"). 12 Section 2911 provides as follows: "The following criteria have been developed 13 by the department pursuant to Section 482(a) of the Business and 14 Professions Code for the purpose of evaluating the rehabilitation 15 of an applicant for issuance or for reinstatement of a license in 16 considering whether or not to deny the issuance or reinstatement 17 on account of a crime or act committed by the applicant." 18

19 5. Respondent failed to offer evidence that she
 20 satisfied the following Rehabilitation Criteria:

2911 (a) Although over two years have passed since
Respondent's criminal conviction, a longer period is required if
there is a history of acts or conduct substantially related to
the qualifications, functions, or duties of a real estate
licensee. The evidence demonstrated that Respondent engaged in
repeated acts of bank fraud over a 3 year period, from 1995 to
1998. Therefore, her conviction does not represent an isolated

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incident, but. rather a history of substantially related criminal 1\_ conduct.

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6. Bank Fraud is a dishonest act. Honesty and 4 truthfulness are attributes required of a real estate licensee because they are fiduciaries in their dealings with the public. A license to sell real estate by its very nature gives the 7 licensee unfettered access to the personal belongings of those who seek to sell their homes. Clients rely on the licensee's integrity in representing them, disclosing important facts about the properties he or she is privy to and holding monies and other personal property in a fiduciary capacity.

> The Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear. (Ring v. Smith (1970) 5 Cal.App.3<sup>rd</sup> 197, 205, Golde v Fox (1976) 98 Cal.App.3d, 167, 177.). Harrington v. Department of Real Estate (1989) 214 Cal.App.3d, 394, 402.

The Real Estate Law and the disciplinary procedures 7. provided for in the Real Estate Law are designed to protect the 19 public and to achieve the maximum protection for the purchasers of real property and those dealing with real estate licensees 21 (Business and Professions Code Section 10050 and Handeland v. 22 Department of Real Estate (1976) 58 Cal.App.3d 513.)

8. Real estate licensees occupy a unique position of 24 trust and responsibility toward the consuming public. They 25 function with little supervision. The possession of a real 26 estate license, even a license issued on a restricted basis, 27

entitles the holder to access to the homes and property of others without supervision. Such licensees must be trustworthy. The public is entitled to assurance that persons to whom real estate licenses are issued are persons that can be relied upon and that they can be trusted.

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9. Due to the prolonged history of fraudulent behavior
7 to support an affluent lifestyle and the breach of trust in a
8 fiduciary position, which led to Respondent's bank fraud
9 conviction, protection of public interest compels placing a more
10 substantial period of restriction upon any real estate
11 salesperson license issued to Respondent.

#### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

14 Respondent's application for a real estate salesperson 15 license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to 16 section 10153.5 of the Business and Professions Code. The 17 18 restricted license issued to the Respondent shall be subjected to 19 all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and 20 21 restrictions imposed under authority of section 10156.6 of said Code: 22

1. <u>The license shall not confer any property right in</u> 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:

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(a) <u>The conviction of Respondent (including a plea of nolo</u> contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

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(b) <u>The receipt of evidence that Respondent has violated</u> provisions of California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. <u>Respondent shall not be eligible to apply for the</u> issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until <u>four years</u> have elapsed from the <u>date of issuance of the restricted license to Respondent</u>.

3. <u>With the application for license, or with the</u> 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) <u>That the employing broker has read the Decision which</u> is the basis for the issuance of the restricted license; and

(b) <u>That the employing broker will carefully review all</u> transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the

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licensee's performance of acts for which a license is required.

3 4. Respondent's restricted real estate salesperson 4 license is issued subject to the requirements of section 10153.4 5 of the Business and Professions Code, to wit: Respondent shall, 6 within eighteen (18) months of the issuance of the restricted 7 license, submit evidence satisfactory to the Commissioner of 8 successful completion, at an accredited institution, of a course 9 in real estate practices and one of the courses listed in section 10 10 153.2, other than real estate principles, advanced legal 11 aspects of real estate, advanced real estate finance or advanced 12 real estate appraisal. If Respondent fails to timely present to 13 the Department satisfactory evidence of successful completion of the two required course, the restricted license shall be 14 15 automatically suspended effective eighteen (18) months after, the date of its issuance. Said suspension shall not be lifted unless, 16 17 prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the 18 19 Commissioner has given written notice to Respondent of lifting of 20 the suspension.

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5. Pursuant to section 10154, if Respondent has not

satisfied the requirements for an unqualified license under section 10153.5, 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.

This Decision shall become effective at 12 o'clock noon JUL - 3 2008 on D IT IS SO ORDERED JEFF DAVI Rea// Estate Commissioner 11 -

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8	BEFORE THE DEPARTMENT OF REAL ESTATE
9	STATE OF CALIFORNIA
10	* * *
11	In the Matter of the Application of ) ) No. H-34439 LA
12	SHIRLEY ANN HORTON, L-2007120384
13 14	Respondent.
15	NOTICE
16	TO: SHIRLEY ANN HORTON, Respondent.
17	YOU ARE HEREBY NOTIFIED that the Proposed Decision
18	herein dated February 5, 2008, of the Administrative Law Judge is
19	not adopted as the Decision of the Real Estate Commissioner. A
20	copy of the Proposed Decision dated February 5, 2008, is attached
21	for your information.
· 22	In accordance with Section 11517(c) of the Government
23	Code of the State of California, the disposition of this case
24	will be determined by me after consideration of the record herein
25	including the transcript of the proceedings held on January 23,
26	2008, any written argument hereafter submitted on behalf of
27	Respondent and Complainant.
	- 1 -

Written argument of Respondent to be considered by me
 must be submitted within 15 days after receipt of the transcript
 of the proceedings of January 23, 2008, at the Los Angeles office
 of the Department of Real Estate unless an extension of the time
 is granted for good cause shown.

<sup>6</sup> Written argument of Complainant to be considered by me <sup>7</sup> must be submitted within 15 days after receipt of the argument of <sup>8</sup> Respondent at the Los Angeles office of the Department of Real <sup>9</sup> Estate unless an extension of the time is granted for good cause <sup>10</sup> shown.

<u>0/27/58</u> 11 DATED: 12 JEFF DAVI 13 Estage Commissioner Real 14 15 16 17 18 19 20 21 22 23 24 25 26 27

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# BEFORE THE DEPARTMENT OF REAL ESTATE STATE OF CALIFORNIA

In the Matter of the Application of:

File No.: H-34439 LA

OAH No.: L2007120384

SHIRLEY ANN HORTON,

Respondent.

# **PROPOSED DECISION**

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on January 23, 2008.

Shari L. Sveningson, Real Estate Counsel, represented the Complainant.

Respondent appeared in person and represented herself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The Administrative Law Judge now finds, concludes and orders as follows:

## FACTUAL FINDINGS

Parties

1. Complainant Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in her official capacity.

2. On May 8, 2006, Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license, with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Business and Professions Code section 10153.4.

# Criminal Conviction

3. In 1994 Respondent was employed by United Airlines Employee's Credit Union (UAECU) as a teller. After a time she was promoted to a loan officer, a fiduciary position. While in that position, beginning in 1995 and over a period of time, Respondent issued a VISA credit card to her mother (without her mother's knowledge) and caused loans to be issued to certain family members (without their knowledge). Respondent used the credit and loan proceeds for her own family and household expenses. Eventually a 1998 audit by UAECU revealed the on-going fraud and Respondent was subsequently prosecuted, in that UAECU, the victim of the fraud suffered losses of approximately \$117,000. Thereafter, on November 1, 2000, in the United States District Court Northern District of Illinois, in Case No. 00-CR-796-1, Respondent was convicted of violating title 18 USC 1344 (Bank Fraud), a felony. The underlying facts of the criminal conviction involve moral turpitude.

4. Respondent's conduct set forth in Finding 3 constitutes the appropriating of property belonging to another person; the employment of fraud and deceit to achieve an end; the doing of an unlawful act of conferring a financial benefit upon Respondent.

#### Rehabilitation

5. As a result of the conviction, Respondent completed a period of incarceration by serving eight months in jail and two months in a half-way house. Thereafter, she did successfully complete a three year term of formal probation (supervised release) and received an early termination of probation on August 21, 2004, having successfully complied with all terms of probation, including the payment of full restitution in the amount of \$117,000. As a result of the payment of restitution a Satisfaction of Judgment was filed on April 11, 2003. Respondent has suffered no other conviction and has been in conformity with societal rules.

6. The proceeds from her wrongful conduct were used to undergird the family's previously affluent lifestyle during a period of economic downturn. Presently all family finances are handled by her husband, a real estate licensee. Respondent has been in a long term marriage and is the mother of three adult children and is grandmother to two children. Respondent has stability of family life and does fulfill all parental and familial obligations.

7. Respondent spent a number of hours studying for the licensing examination. Thereafter, she took and passed the Real Estate Salesperson Examination. Respondent, therefore, has completion of formal training courses for economic self-improvement.

8. Respondent has been employed by Century 21, Lois Lauer Realty, since October, 2001 as a transaction coordinator. She was hired by Shirley Harry, Associate of Century 21, who had knowledge of Respondent's conviction. Ms. Harry testified, credibly, as to Respondent's work ethic, her trustworthiness, and her competence and industry while an employee of Century 21 over the last seven years.

9. Respondent has a change in attitude from that which existed at the time of the criminal conduct. That change – evidenced by the credible testimony of Respondent and Ms. Harry – was brought about by a number of factors:

- the support of her colleagues at Century 21, and the support of her family;
- the shame of the criminal proceeding which caused her to reorient her moral compass to the orientation that previously existed;
- the realization that what she did was wrong and dishonest, and contrition for that past, wrongful conduct.

10. Respondent was open and honest during the Department's investigation of the conviction and during the application process. Respondent was open and honest in her testimony and has worked with integrity since the conviction. Century 21 will undertake the necessary supervision over Respondent's real estate activities should she receive a restricted license. At present, Respondent is a socially and professionally responsible person.

# LEGAL CONCLUSIONS

# Violations

1. Respondent's conviction for a crime of moral turpitude, as set forth in Finding 3 constitutes cause for denial of Respondent's application pursuant to Business and Professions Code section 10177, subdivision (b).

2. The crime set forth in Finding 3 is substantially related to the qualifications, functions and duties of a licensee of the Department under California Code of Regulations, title 10, section 2910, subdivision (a)(1), (a)(4) and (a)(8) by reason of Finding 4 and, therefore, cause exists for denial of Respondent's application under Business and Professions Code section 480, subdivision (a).

3. Cause exists for denial of Respondent's application pursuant to Business and Professions Code section 475, subdivision (a)(2) for a conviction of a crime, by reason of Finding 3.

## Licensing Considerations

4. California Code of Regulations, title 10, section 2911 sets forth criteria of rehabilitation that have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), to evaluate the rehabilitation of an applicant for issuance of a license in considering whether or not to deny the issuance on account of a

crime or act committed by the applicant. The crime is seven and one-half years remote and, thus, Respondent has met the first criterion. By her conduct set forth in Findings 5 through 10. Respondent has met most of the remaining applicable criteria. Accordingly, licensure of Respondent on a restricted status is consistent with 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 10153.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subjected 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 said 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 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.

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4. Respondent's restricted real estate salesperson's 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 a course in real estate practices and one 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 course, 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 10153.5, 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: Telave

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-Administrative Law Judge Office of Administrative Hearings

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Mine	SHARI SVENINGSON, Counsel (SBN 195298)
4 <b>7</b> 1	Department of Real Estate 320 West 4 <sup>th</sup> Street, Suite 350
2	Los Angeles, California 90013-1105
3	Telephone: (213) 576-6982
4	(Direct) (213) 576-6907 DEPARTMENT OF REAL ESTATE
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9	BEFORE THE DEPARTMENT OF REAL ESTATE
10	STATE OF CALIFORNIA
· 11	* * *
12	In the Matter of the Application of ) NO. H-34439 LA
13	SHIRLEY ANN HORTON, ) ) <u>STATEMENT OF ISSUES</u>
14	) Respondent. )
15	)
16	The Complainant, Robin Trujillo, a Deputy Real Estate
17	Commissioner of the State of California, for cause of Statement
18	of Issues against SHIRLEY ANN HORTON, ("Respondent"), is
19	informed and alleges as follows:
20	1.
21	The Complainant, Robin Trujillo, a Deputy Real Estate
22	Commissioner of the State of California, makes this Statement of
23	Issues against Respondent in her official capacity.
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26	111
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Respondent made her application to the Department of Real Estate of the State of California for a real estate salesperson license on or about May 8, 2006, with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Business and Professions Code ("Code") Section 10153.4.

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#### (CRIMINAL CONVICTION)

10 On or about November 1, 2000, in the United States 11 District Court Northern District of Illinois, in case no. 00-CR-12 796-1, Respondent was convicted of violating Title 18 USC 1344 13 (Bank Fraud), a felony. The underlying facts of this criminal 14 conviction involve moral turpitude, which bear a substantial 15 relationship under Title 10, Chapter 6, Section 2910, California 16 Code of Regulations, to the qualifications, functions or duties 17 of a real estate licensee.

4.

<sup>19</sup> The crime of which Respondent was convicted, as <sup>20</sup> alleged herein above in Paragraph 3, constitutes cause for <sup>21</sup> denial of Respondent's application for a real estate license <sup>22</sup> under Business and Professions Code Sections 475(a)(2); <sup>23</sup> 480(a)(1); and/or 10177(b).

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The Statement of Issues is brought under the 1 provisions of Section 10100, Division 4 of the Business and 2 Professions Code of the State of California and Sections 11500 3 and 11529 of the Government Code. 4 5 6 WHEREFORE, Complainant prays that the above entitled 7 matter be set for hearing and, upon proof of the charges 8 contained herein, that the Commissioner refuse to authorize the 9 issuance of, and deny the issuance of, a real estate salesperson 10 license to Respondent, SHIRLEY ANN HORTON, and for such other 11 and further relief as may be proper in the premises. 12 Dated at Los Angeles, California 13 14 This 22 day of October, 2007. 15 16 17 rujillo Deputy Real Estate Commissioner 18 19 20 21 22 23 24 25 Cc: SHIRLEY ANN HORTON 26

Robin Trujillo Sacto.

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