

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN ROONEY
Assistant Chief Counsel
3 MARLOU de LUNA (State Bar No. 162259)
4 Department of Business Oversight
320 W. 4th Street, Suite 750
5 Los Angeles, CA 90013-2344
6 (213) 576-1396 (213) 576-7181 (Fax)

7 Attorneys for Complainant

8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11	In the Matter of:)	NMLS NO.: 377984
12)	
13	THE COMMISSIONER OF BUSINESS)	ORDER DENYING APPLICATION FOR
14	OVERSIGHT,)	MORTGAGE LOAN ORIGINATOR LICENSE
15	Complainant,)	
16	v.)	
17	BENJAMIN FLORES DIAZ aka BENJAMIN)	
18	DIAZ, aka BENNY FLORES DIAZ JR.,)	
19	Respondent.)	

20
21 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner) finds that:

22 1. On or about October 12, 2017, Benjamin Flores Diaz aka Benjamin Diaz, aka Benny
23 Flores Diaz, Jr. (Diaz) filed an application for a mortgage loan originator license with the
24 Commissioner by submitting a Form MU4 (MU4) through the Nationwide Multistate Licensing
25 System (NMLS).

26 2. Diaz’s MU4 indicated that he is licensed by the California Bureau of Real Estate
27 (BRE) (formerly known as the California Department of Real Estate) as a real estate sales agent. The
28 BRE’s Consumer Access website showed that Diaz presently holds a restricted salesperson license. It

1 also showed that Diaz has a history of license discipline, as described below.

2 3. On or about October 26, 1998, effective December 23, 1998, the BRE revoked Diaz's
3 real estate broker license based on the Accusation it filed on July 3, 1998 (*In the Matter of the*
4 *Accusation of Benjamin Diaz, No. H-1377 FRESNO, Filed July 3, 1998, Department of Real Estate*).
5 The BRE alleged Diaz engaged in dishonest or fraudulent activities concerning the sale of a real
6 property owned by Diaz and his wife. Subsequently, Diaz signed a Stipulation and Agreement in
7 October of 1998 (*Stipulation and Agreement, No. H-1377, Filed December 4, 1998*). Diaz agreed,
8 among other things, to the revocation of his real estate broker license, but the BRE granted Diaz the
9 right to the issuance of a restricted real estate broker license. Diaz received a restricted real estate
10 broker license on April 1, 1999.

11 4. On May 18, 2001, Diaz petitioned for an unrestricted broker license. The petition was
12 granted, and an order issued on March 28, 2002 providing Diaz satisfies certain conditions within
13 nine months from the date of the order (*Order Granting Reinstatement of License, No. H-1377*
14 *FRESNO, March 28, 2002*). Diaz failed to meet the required conditions. Subsequently, Diaz filed a
15 second petition for an unrestricted broker license on November 13, 2003. The petition was granted
16 providing Diaz satisfies certain conditions within nine months from the date of the order. The BRE
17 issued an unrestricted real estate broker license to Diaz on October 4, 2004 (*Order Granting*
18 *Reinstatement of License, No. H-1377 FRESNO, October 4, 2004*).

19 5. On October 20, 2014, the BRE again revoked Diaz's real estate broker license based
20 on the Accusation it filed on September 5, 2012 (*In the Matter of the Accusation of Benjamin F. Diaz,*
21 *No. H-2776 FR, Filed September 5, 2012*). The BRE alleged that, from the period of November 1,
22 2009 through May 1, 2011, Diaz engaged in unlicensed mortgage loan originator activities, including
23 soliciting borrowers for loan modification under the name "Central Mortgage." In addition, Diaz
24 "claimed, demanded, charged, collected, and/or received advance fees in connection with loan
25 modification services after October 10, 2009, in violation of Section 10085.6 (unlawful collection of
26 advance fees in connection with loan modification services related to loan modifications) of the
27 [Business and Professions] Code and Section 2945.4 (unlawful collection of advance fees related to
28 loan modifications) of the California Civil Code." The administrative law court affirmed the BRE's

1 findings and ruled that at the time of the complaint against Diaz, the BRE had not authorized Diaz to
2 act as a mortgage loan originator. Diaz was found to be performing loan modification services,
3 including soliciting borrowers for loan modifications under the name “Central Mortgage.” In
4 addition, the court also found that Diaz collected advance fees, trust funds, from principals for
5 providing loan modification services. Accordingly, the BRE revoked Diaz’s real estate broker
6 license. Subsequently, the BRE issued Diaz a restricted sales person license which he currently still
7 holds.

8 6. In addition to Diaz’s BRE license discipline history, Diaz has not been candid in his
9 response to questions posed in his MU4 nor has he provided sufficient explanations for those
10 questions he answered in the affirmative, as described below.

11 7. Diaz’s MU4 dated October 12, 2017 disclosed that he answered “Yes” to the
12 following questions below:

- 13 a) Financial Disclosure question (A)(1) that asked: Have you filed a personal bankruptcy
14 petition or been the subject of an involuntary bankruptcy petition within the past 10
15 years?
- 16 b) Civil Disclosure question (J)(1)(b) that asked: Has any domestic or foreign court ever
17 found that you were involved in a violation of any financial service-related statute(s)
18 or regulation(s)?
- 19 c) Regulatory Action Disclosure question (K) that asked: Has any state or federal
20 regulatory agency or foreign financial regulatory authority or self-regulatory
21 organization (SRO) ever:
- 22 i. (1) found you to have made a false statement or omission or been dishonest,
23 unfair or unethical?
- 24 ii. (2) found you to have been involved in a violation of a financial services-
25 related business regulation(s) or statute(s):
- 26 iii. (3) found you to have been a cause of a financial services-related business
27 authorization to do business denied, suspended, revoked or restricted?

28 8. On October 27, 2017, the Department of Business Oversight (Department) instructed

1 Diaz, through NMLS, to amend his response to Regulatory Action questions (K)(5), (K)(6) and
2 (K)(7) based on the BRE's actions against him. Diaz was also directed to provide a detailed
3 explanation of the circumstances concerning BRE Action H-2776 FR (filed on September 5, 2012)
4 and to provide any applicable documentation. In addition, Diaz was also told to provide a detailed
5 explanation of the circumstance under the "Event Explanation Detail section of his MU4 and submit
6 applicable documentation for each "Yes" response to – Financial Disclosure (A)(1), Civil Disclosure
7 (J)(1)(b), and Regulatory Action Disclosure (K)(1), (K)(2) and (K)(3).

8 9. On November 6, 2017, Diaz filed an amended MU4 where he submitted a one-page
9 letter dated November 6, 2017 explaining his response to Regulatory Action questions (K)(1), (K)(2),
10 (K)(3), (K)(5), (K)(6) and (K)(7), Civil Disclosure question (J)(1)(b), and Financial Disclosure
11 question (A)(1). The Commissioner's staff concluded that one-page letter submitted by Diaz was
12 inadequate because it does not provide a complete explanation for each of the questions at issue.
13 Moreover, Diaz did not amend his response to Regulatory Action questions (K)(5), (K)(6) and (K)(7)
14 – these questions remained unanswered.

15 10. On November 28, 2017, Diaz filed an amended MU4 where he amended his response
16 to "Yes" for Financial Disclosure question (A)(3) that ask: "Have you been the subject of a
17 foreclosure action within the past 10 years? However, Diaz did not provide an explanation to his
18 "Yes" response. Diaz also uploaded several documents: (1) Notice of Hearing, (2) copy of a cashier's
19 check in the amount of \$1,140.00, (3) a document titled Complainant's Summary Response to
20 Petitioner's Request for Reconsideration of Decision, and (4) a letter from the BRE addressed to
21 "Prospective Employing Broker" but Diaz did not provide any information concerning the documents
22 he submitted.

23 11. Again, on November 28, 2017, Diaz filed another amended MU4 where he uploaded
24 in the "Event Explanation Detail" section of his MU4, a one-page letter dated November 6, 2017 (the
25 same letter previously submitted with the amended MU4 dated November 6, 2017). The
26 Commissioner's staff have previously determined that this one-page letter was inadequate because it
27 does not provide a complete explanation for each of the questions at issue.

28 12. On December 8, 2017 and December 11, 2017, Diaz filed two amended MU4s to

1 update his employment address. Diaz did not make any other revisions.

2 13. On January 5, 2018, the Commissioner's staff phoned Diaz to discuss the necessary
3 information required by the Commissioner to complete the review of his MLO license application. A
4 follow-up email was sent to Diaz on January 26, 2018 since the Commissioner's staff was not able to
5 reach him by phone.

6 14. On February 1, 2018, Diaz filed an amended MU4 where he provided explanations for
7 Financial Disclosure question (A)(1), Civil Judicial Foreclosure question (J)(1)(b), and Regulatory
8 Action questions (K)(1), (K)(2) and (K)(3). But there were no further explanations for Regulatory
9 Action questions (K)(5), (K)(6) and (K) (7). Diaz also provided minimal supporting documentation.
10 The Commissioner's staff determined that Diaz's explanations were inadequate. For instance, Diaz
11 did not provide a complete and accurate statement concerning the revocation of his real estate broker
12 license and the restricted sales person license which he currently holds. Moreover, Diaz did not
13 provide all required supporting documentation to those questions in which he gave a "Yes" answer.

14 15. On February 22, 2018, the Commissioner's staff phoned Diaz in response to Diaz's
15 voicemail concerning his request for reasonable accommodation (Diaz stated in his voicemail that
16 due to his disability he could not complete his MU4 as had been requested. He asked what the
17 Department was able to provide for a "reasonable accommodation" since the NMLS website was not
18 ADA (American Disabilities Act) compliant.). A follow-up email was also sent to Diaz to provide
19 him with the information required from him concerning his reasonable accommodation request.

20 16. On February 28, 2018, the Commissioner received a package from Diaz containing the
21 hard copies of his response to Regulatory Action questions (K)(1), (K)(2), (K)(3), (K)(5), (K)(6) and
22 (K)(7). The Commissioner's staff reviewed the information Diaz provided and concluded that Diaz
23 did not provide a complete explanation to the Regulatory Action questions. Likewise, Diaz did not
24 provide a complete explanation for Civil Judiciary question (J)(1)(b). Additionally, Diaz did not
25 provide any documentation concerning BRE action No. H-2776. Also, to date, Diaz only disclosed
26 and provided documentation for one of two judgments filed against him.

27 17. Diaz's explanations to his NMLS disclosures remain deficient. Additionally, Diaz has
28 not provided all the required supporting documents to those questions he answered "Yes" to in his

1 MU4 – Regulatory Action questions (K)(1), (K)(2), (K)(3), (K)(5), (K)(6) and (K)(7), Civil Judiciary
2 question (J)(1)(b), Financial Disclosure questions (A)(1) and (A)(3).

3 18. The Commissioner finds that Diaz does not meet at least one of the minimum
4 requirements for the issuance of a mortgage loan originator license as provided by Financial Code
5 sections 22109.1 or 50141. Diaz’s license discipline with the BRE and his inadequate explanations
6 and documentation concerning his MU4 disclosures belie the requirement under Financial Code
7 sections 22109.1, subdivision (a)(3) and 50141, subdivision (a)(3), that the applicant “has
8 demonstrated such financial responsibility, character, and general fitness as to command the
9 confidence of the community and to warrant a determination that the mortgage loan originator will
10 operate honestly, fairly, and efficiently within the purposes of these divisions.

11 19. On May 17, 2018, the Commissioner issued a Notice of Intent to Deny Application for
12 Mortgage Loan Originator License, Statement of Issues, and accompanying documents against Diaz
13 based upon the above. Diaz was served with those documents on May 18, 2018 by certified return-
14 receipt mail at the address listed on his application. The Department received the green return-receipt
15 card signed by Nathan Coronel on May 22, 2018. Moreover, Diaz was also served with the
16 documents mentioned above by email at bendiaz8945@gmail.com, an email address provided by
17 Diaz. The Department has received no request for hearing from Diaz and the time to request a
18 hearing has expired.

19 NOW GOOD CAUSE APPEARING THEREFORE, it is hereby ordered that the mortgage
20 lending license application of Benjamin Flores Diaz aka Benjamin Diaz, aka Benny Flores Diaz, Jr. is
21 hereby denied. This order is effective as of the date hereof.

22 Dated: October 1, 2018
23 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

24
25
26 By: _____
27 MARY ANN SMITH
28 Deputy Commissioner
Enforcement Division