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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)	STATEMENT OF ISSUES
14	OVERSIGHT,)	
15	Complainant,)	
16	v.)	
17	BENJAMIN FLORES DIAZ aka BENJAMIN)	
18	DIAZ, aka BENNY FLORES DIAZ JR.,)	
19	Respondent.)	

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21 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), is informed and
22 believes, and based on such information and belief, alleges and charges Respondent Benjamin Flores
23 Diaz aka Benjamin Diaz, aka Benny Flores Diaz, Jr. (Diaz) as follows:

24 **I.**

25 **Jurisdiction and Venue**

26 1. The Commissioner as chief officer of the Department of Business Oversight
27 (Department) is authorized to administer and enforce the provisions of the California Financing Law
28 (Fin. Code, § 22000 et seq.) (CFL) and the California Residential Mortgage Lending Act (Fin. Code,

1 § 50000 et seq.) (CRMLA) and the rules and regulations promulgated thereunder.

2 2. Under the provisions of Financial Code sections 22109.1 and 50141, the
3 Commissioner brings this action to deny the mortgage loan originator license application submitted
4 by Diaz. The proposed order seeks to deny the issuance of a mortgage loan originator license in that
5 Diaz has not demonstrated such financial responsibility, character, and general fitness as to command
6 the confidence of the community and to warrant a determination that the mortgage loan originator
7 will operate honestly, fairly, and efficiently within the purposes of this division.

8 II.

9 Statement of Facts

10 3. On or about October 12, 2017 Diaz filed an application for a mortgage loan originator
11 license with the Commissioner by submitting a Form MU4 (MU4) through the Nationwide Multistate
12 Licensing System (NMLS).

13 4. Diaz's MU4 indicated that he is licensed by the California Bureau of Real Estate
14 (BRE) (formerly known as the California Department of Real Estate) as a real estate sales agent. The
15 BRE's Consumer Access website showed that Diaz presently holds a restricted salesperson license. It
16 also showed that Diaz has a history of license discipline, as described below.

17 5. On or about October 26, 1998, effective December 23, 1998, the BRE revoked Diaz's
18 real estate broker license based on the Accusation¹ it filed on July 3, 1998. The BRE alleged Diaz
19 engaged in dishonest or fraudulent activities concerning the sale of a real property owned by Diaz
20 and his wife. Subsequently, Diaz signed a Stipulation and Agreement in October of 1998.² Diaz
21 agreed, among other things, to the revocation of his real estate broker license, but the BRE granted
22 Diaz the right to the issuance of a restricted real estate broker license. Diaz received a restricted real
23 estate broker license on April 1, 1999.

24 6. On May 18, 2001, Diaz petitioned for an unrestricted broker license. The petition was
25 granted, and an order issued on March 28, 2002 providing Diaz satisfies certain conditions within
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28 ¹ In the Matter of the Accusation of Benjamin Diaz, No. H-1377 FRESNO, Filed July 3, 1998, Department of Real Estate.

² Stipulation and Agreement, No. H-1377, Filed December 4, 1998.

1 nine months from the date of the order.³ Diaz failed to meet the required conditions. Subsequently,
2 Diaz filed a second petition for an unrestricted broker license on November 13, 2003. The petition
3 was granted providing Diaz satisfies certain conditions within nine months from the date of the order.
4 The BRE issued an unrestricted real estate broker license to Diaz on October 4, 2004.⁴

5 7. On October 20, 2014, the BRE again revoked Diaz's real estate broker license based
6 on the Accusation it filed on September 5, 2012.⁵ The BRE alleged that, from the period of
7 November 1, 2009 through May 1, 2011, Diaz engaged in unlicensed mortgage loan originator
8 activities, including soliciting borrowers for loan modification under the name "Central Mortgage."
9 In addition, Diaz "claimed, demanded, charged, collected, and/or received advance fees in connection
10 with loan modification services after October 10, 2009, in violation of Section 10085.6 (unlawful
11 collection of advance fees in connection with loan modification services related to loan
12 modifications) of the [Business and Professions] Code and Section 2945.4 (unlawful collection of
13 advance fees related to loan modifications) of the California Civil Code." The administrative law
14 court affirmed the BRE's findings and ruled that at the time of the complaint against Diaz, the BRE
15 had not authorized Diaz to act as a mortgage loan originator. Diaz was found to be performing loan
16 modification services, including soliciting borrowers for loan modifications under the name "Central
17 Mortgage." In addition, the court also found that Diaz collected advance fees, trust funds, from
18 principals for providing loan modification services. Accordingly, the BRE revoked Diaz's real estate
19 broker license. Subsequently, the BRE issued Diaz a restricted sales person license which he
20 currently still holds.

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

24 9. Diaz's MU4 dated October 12, 2017 disclosed that he answered "Yes" to the
25 following questions below:

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27 ³ Order Granting Reinstatement of License, No. H-1377 FRESNO, March 28, 2002

28 ⁴ Order Granting Reinstatement of License, No. H-1377 FRESNO, October 4, 2004

⁵ In the Matter of the Accusation of Benjamin F. Diaz, No. H-2776 FR, Filed September 5, 2012

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

16 10. On October 27, 2017, the Department instructed Diaz, through NMLS, to amend his
17 response to Regulatory Action questions (K)(5), (K)(6) and (K)(7) based on the BRE's actions
18 against him. Diaz was also directed to provide a detailed explanation of the circumstances concerning
19 BRE Action H-2776 FR (filed on September 5, 2012) and to provide any applicable documentation.
20 In addition, Diaz was also told to provide a detailed explanation of the circumstance under the "Event
21 Explanation Detail section of his MU4 and submit applicable documentation for each "Yes" response
22 to – Financial Disclosure (A)(1), Civil Disclosure (J)(1)(b), and Regulatory Action Disclosure (K)(1),
23 (K)(2) and (K)(3).

24 11. On November 6, 2017, Diaz filed an amended MU4 where he submitted a one-page
25 letter dated November 6, 2017 explaining his response to Regulatory Action questions (K)(1), (K)(2),
26 (K)(3), (K)(5), (K)(6) and (K)(7), Civil Disclosure question (J)(1)(b), and Financial Disclosure
27 question (A)(1). The Commissioner's staff concluded that one-page letter submitted by Diaz was
28 inadequate because it does not provide a complete explanation for each of the questions at issue.

1 Moreover, Diaz did not amend his response to Regulatory Action questions (K)(5), (K)(6) and (K)(7)
2 – these questions remained unanswered.

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

11 13. Again, on November 28, 2017, Diaz filed another amended MU4 where he uploaded
12 in the “Event Explanation Detail” section of his MU4, a one-page letter dated November 6, 2017.⁶
13 The Commissioner’s staff have previously determined that this one-page letter was inadequate
14 because it does not provide a complete explanation for each of the questions at issue.

15 14. On December 8, 2017 and December 11, 2017, Diaz filed two amended MU4s to
16 update his employment address. Diaz did not make any other revisions.

17 15. On January 5, 2018, the Commissioner’s staff phoned Diaz to discuss the necessary
18 information required by the Commissioner to complete the review of his MLO license application. A
19 follow-up email was sent to Diaz on January 26, 2018 since the Commissioner’s staff was not able to
20 reach him by phone.

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

2 17. On February 22, 2018, the Commissioner’s staff phoned Diaz in response to Diaz’s
 3 voicemail concerning his request for reasonable accommodation.⁷ A follow-up email was also sent to
 4 Diaz to provide him with the information required from him concerning his reasonable
 5 accommodation request.

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

13 19. Diaz’s explanations to his NMLS disclosures remain deficient. Additionally, Diaz has
 14 not provided all the required supporting documents to those questions he answered “Yes” to in his
 15 MU4 – Regulatory Action questions (K)(1), (K)(2), (K)(3), (K)(5), (K)(6) and (K)(7), Civil Judiciary
 16 question (J)(1)(b), Financial Disclosure questions (A)(1) and (A)(3).

17 **III.**

18 **Applicable Statutes**

19 20. Financial Code section 22109.1 provides:

20 (a) The commissioner shall deny an application for a mortgage loan
 21 originator license unless the commissioner makes, at a minimum, the
 22 following findings:

23 (3) The applicant has demonstrated such financial responsibility,
 24 character, and general fitness as to command the confidence of the
 25 community and to warrant a determination that the mortgage loan
 26 originator will operate honestly, fairly, and efficiently within the
 27 purposes of this division.

27 ⁶ The same letter previously submitted with the amended MU4 dated November 6, 2017.

28 ⁷ Diaz stated in his voicemail that due to his disability he could not complete his MU4 as had been requested. He asked what the Department was able to provide for a “reasonable accommodation” since the NMLS website was not ADA (American Disabilities Act) compliant.

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(b) Before denying a license under this section, the commissioner shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and shall have all the powers granted under that chapter.

21. Financial Code section 50141 provides in pertinent part:

(a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

(b) Before denying a license under this section, the commissioner shall proceed as prescribed by Chapter 5 (commencing with *Section 11500*) of Part 1 of Division 3 of Title 2 of the Government Code and shall have all the powers granted under that chapter.

IV.

Conclusion

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

By reason of the foregoing, pursuant to Financial Code sections 22109.1 and 50141, the Commissioner shall deny Diaz’s application for a mortgage loan originator license.

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WHEREFORE IT IS PRAYED that the mortgage loan originator application filed by Benjamin Flores Diaz aka Benjamin Diaz, aka Benny Flores Diaz, Jr. be denied.

Dated: May 17, 2018
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
MARLOU de LUNA
Senior Counsel
Enforcement Division