

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 UCHE L. ENENWALI (State Bar No. 235832)
Senior Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7586
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant
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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CFL APPLICATION NO. 229891
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) STATEMENT OF ISSUES IN SUPPORT OF
14) NOTICE OF INTENTION TO ISSUE ORDER
Complainant,) DENYING MORTGAGE LOAN
15 v.) ORIGINATOR LICENSE APPLICATION
16 ALEXANDER THOMAS CARLUCCI,) PURSUANT TO FINANCIAL CODE
17) SECTIONS 22109.1
Respondent.)
18)
19)

20 The Complainant, the Commissioner of Business Oversight (Commissioner), alleges and
21 charges Respondent Alexander Thomas Carlucci (Carlucci) as follows:
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23 **I.**

24 **Introduction**

25 1. The Commissioner licenses and regulates mortgage loan originators, finance lenders,
26 and brokers under the California Financing Law (Fin. Code, § 22000 et seq.) (CFL).

27 2. To become licensed by the Commissioner as a mortgage loan originator (MLO), an
28 individual must submit a uniform application form (known as the MU2 or MU4 form) through the
Nationwide Mortgage Licensing System & Registry (NMLS). The NMLS contains a set of detailed

1 instructions for filing license applications, including a checklist of items to be completed by the
2 applicant, who is fully responsible for all the requirements of the license.

3 3. On May 16, 2018, Carlucci applied for an MLO license with the Commissioner (file
4 number 229891 and hereinafter, Application) by submitting a Form MU4 through the NLMS.

5 4. The Commissioner intends to issue an Order denying Carlucci’s Application pursuant
6 to Financial Code section 22109.1 on the basis that Carlucci was held liable by the U.S. Securities
7 and Exchange Commission (SEC) for engaging in securities fraud, and Carlucci has failed to
8 demonstrate 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 the CFL.

11 **II.**

12 **Statement of Facts**

13 5. On September 29, 2017, the SEC filed a complaint in the U.S. District Court,
14 Northern District of Illinois, in the case, *SEC v. Fleming, et. al.*, Case No. 1:17-cv-07049 (2017
15 Complaint) against Carlucci and the following defendants: Shane Fleming; Bret Beshey; Peter
16 Kourtis; Christopher Bonvissuto; Austin Mansur; Eric Weller; and Dimitri Kandalepas (collectively
17 Defendants). The 2017 Complaint alleged that Defendants unlawfully engaged in insider trading in
18 the securities of Life Time Fitness, Inc. (Life Time), a Minnesota corporation, in advance of an
19 announcement that Life Time was going to be acquired by private equity firms.

20 6. According to the 2017 Complaint, in about February 2015, Carlucci received insider
21 information about the impending acquisition of Life Time from a co-defendant. In about March
22 2015, Carlucci purchased an option based on the information he obtained and realized illegal profits
23 of approximately \$14,492.00. Carlucci was further alleged to have paid approximately \$900.00 as a
24 kickback for the tip provided by the co-defendant. The 2017 Complaint stated that the Defendants
25 obtained total illegal trading profits of approximately \$866,629.00 because of their insider dealing.

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1 7. The 2017 Complaint noted that by engaging in the conduct described in the
2 complaint, Defendants:

3 Directly or indirectly, in connection with the purchase or sale of
4 securities, by the use of means or instrumentalities of interstate
5 commerce, or of the mails, with scienter: (a) employed devices,
6 schemes, or artifices to defraud; (b) made untrue statements of
7 material fact or omitted to state material facts necessary in order to
8 make the statements made, in the light of the circumstances under
9 which they were made, not misleading; and (c) engaged in acts,
10 practices, or courses of business which operated or would operate as
11 a fraud or deceit upon other persons, including purchasers and sellers
12 of securities.

13 8. On or about September 28, 2017, the U.S. Attorney's Office filed a criminal
14 complaint against the Defendants in the U.S. District Court, Northern District of Illinois in the matter
15 of *United States v. Beshey, et. al.*, Case No. 1:17-cr-00643, for engaging in insider trading and
16 securities fraud. On or about November 8, 2017, the Northern District Court of Illinois entered an
17 Order releasing Carlucci from criminal prosecution after Carlucci signed a "pretrial diversion
18 agreement that acknowledges responsibility for criminal conduct" relating to the charges filed
19 against him.

20 9. On April 24, 2018, the SEC entered an Order permanently restraining and enjoining
21 the Defendants, including Carlucci from among other things, engaging in the sale or purchase of
22 securities by means of fraud in violation of the Securities and Exchange Act of 1934. Carlucci was
23 ordered to pay disgorgement in the amount of \$14,491.64, with prejudgment interests in the amount
24 of \$1,307.21.

25 **III.**

26 **Carlucci's MLO Application**

27 10. On May 16, 2018, Carlucci submitted his Application for an MLO license. In his
28 Application, Carlucci answered "yes" to a Criminal Disclosure Question F (2) and "yes" to a
Criminal Judicial Disclosure Question J (2). As required, Carlucci disclosed the SEC's complaint and
provided an explanation as to the circumstances surrounding the SEC's action against him.

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11. The Commissioner finds that based on the SEC’s action against Carlucci and the facts upon which such action was issued, Carlucci has failed to demonstrate 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 the CFL, a requirement for licensure under Financial Code section 22109.1, subdivision (a)(3).

IV.

Grounds to Deny Carlucci’s Application

12. Financial Code section 22109.1, subdivision (a)(3) 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.

Conclusion

Based on the foregoing, the Commissioner is mandated under Financial Code sections 22109.1, subdivision (a)(3) to deny the issuance of a mortgage loan originator license to Alexander Thomas Carlucci.

WHEREFORE, the Commissioner prays that the application for a mortgage loan originator license filed by Alexander Thomas Carlucci on May 16, 2018 be denied pursuant to California Financial Code section 22109(a)(3).

Dated: November 21, 2018

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
UCHE L. ENENWALI
Senior Counsel
Enforcement Division