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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.: 1756184
12)
13 THE CALIFORNIA COMMISSIONER OF) STATEMENT OF ISSUES IN SUPPORT OF
BUSINESS OVERSIGHT,) ORDER DENYING APPLICATION FOR
14) MORTGAGE LOAN ORIGINATOR LICENSE
Complainant,) (FINANCIAL CODE SECTION 50141)
15 v.)
16 AUSTIN TYLER LEE,)
17)
Respondent.)
18)
19)

20 The California Commissioner of Business Oversight (Commissioner) is informed and
21 believes, and based upon such information and belief, alleges and charges Austin Tyler Lee
22 (Respondent) as follows:

23 **I.**
24 **Introduction**

25 The proposed order seeks to deny the issuance of a Mortgage Loan Originator License to
26 Respondent under Financial Code section 50141¹ because Respondent was convicted of a felony
27

28 _____
¹ All further statutory references are to the California Financial Code unless otherwise indicated.

1 during the seven-year period preceding the date of Respondent’s application for licensing and
2 registration.

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4 **II.**
The Application

5 On July 25, 2018, Respondent filed an application for a Mortgage Loan Originator
6 License with the Commissioner under the California Residential Mortgage Lending Act (CRMLA)
7 (Financial Code, § 50000 et seq.), pursuant to Financial Code section 50140. Respondent submitted
8 his application to the Commissioner by filing a Form MU4 through the Nationwide Mortgage
9 Licensing System (NMLS).

10 Form MU4 at Question (F)(1) asked: “Have you ever been convicted or pled guilty or nolo
11 contendere (“no contest”) in a domestic, foreign, or military court to any felony?” On or about
12 August 3, 2018, Respondent answered “No.”

13 Upon reviewing Respondent’s Form MU4, the Department discovered that, in the Superior
14 Court of New Jersey, Camden County, on October 5, 2016, Respondent pled guilty to one count of
15 possession of a controlled substance with intent to distribute (N.J. Stat. Ann. § 2C:35-5a.(1), 5b.(12))
16 (Conviction). (*See State of New Jersey v. Lee*, Case No. 16-10-02745-A, Superior Court of New
17 Jersey, Camden County [complaint filed on October 5, 2016].) Respondent was sentenced in
18 accordance with his guilty plea on December 2, 2016. The Conviction constitutes a felony for
19 purposes of Section 50141. (N.J. Stat. Ann. § 2C:35-5(a)(1), 5(b)(12) [defining the Conviction as a
20 crime of the fourth degree]; *id.* § 2C:43-6 [crimes of the fourth degree subject to imprisonment up to
21 18 months].)²

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23
24 ² (*See also* N.J. Stat. § 17:11C-57 [New Jersey’s implementation of the Secure and Fair
25 Enforcement for Mortgage Licensing Act of 2008—California’s own implementation is the
26 CRMLA—clarifies that, for purposes of mortgage loan originator licensing, “a felony . . . in this
27 State includes any crime of the fourth degree or higher punishable by a term of imprisonment of
28 more than one year”]; BLACK’S LAW DICTIONARY 633 (7th Ed. 1999) [“felony” means a
“serious crime usu. punishable by imprisonment for more than a year”]; *State v. Yung* (Mo.Ct.App.
2008) 246 S.W.3d 547, 552 [analyzing N.J. Stat. Ann. § 2C:35-5 and finding conviction thereunder
to be a felony regardless of the fact that “New Jersey does not use the term ‘felony’ to describe its
crimes”].)

1 On August 9, 2018, the Commissioner instructed Respondent to revise his Form MU4 by
2 providing a detailed explanation of the Conviction and to submit supporting documentation in
3 connection with the criminal disclosure MU4 Form Question (F)(1).

4 On September 17, 2018, Respondent submitted to the Commissioner certified copies of the
5 conviction record of his Conviction. On September 28, 2018, Respondent submitted to the
6 Commissioner additional documents relating to his probation term on the Conviction.

7 Since August 9, 2018, Respondent has made amendments to his account on NMLS.
8 However, Respondent has not changed his response to Question (F)(1) on his Form MU4
9 application.

10 **III.**
11 **Applicable Law**

12 Section 50141 provides in pertinent part:

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

14 . . .

15 (2) (A) The applicant has not been convicted of, or pled guilty or nolo
16 contendere to, a felony in a domestic, foreign, or military court during the
17 seven-year period preceding the date of the application for licensing and
18 registration

18 **IV.**
19 **Felony Conviction**

20 Form MU4 at Question (F) (1) asked: “Have you ever been convicted or pled guilty or nolo
21 contendere (“no contest”) in a domestic, foreign, or military court to any felony?” Respondent
22 answered, “No.”

23 Documents obtained by the Commissioner in connection with Respondent’s application,
24 including the certified conviction record submitted by Respondent himself, show that, on October 5,
25 2016, Respondent pled guilty to one count of possession of a controlled substance with intent to
26 distribute in violation of N.J. Stat. Ann. § 2C:35-5a.(1), 5b.(12), which constitutes a felony under the
27 law of New Jersey as described above.

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VII.
Conclusion

The Commissioner finds, by reason of the foregoing, that Respondent does not meet the requirements for issuance of a mortgage loan originator license. Pursuant to Financial Code 50141, subdivision (a)(2)(A), Respondent was convicted of a felony during the seven-year period preceding the date of Respondent’s application for licensing and registration. Therefore, pursuant to section 50141, subdivision (a), the Commissioner shall deny Respondent’s application for a mortgage loan originator license.

WHEREFORE IT IS PRAYED that the mortgage loan originator application filed by Respondent be denied.

Dated: December 7, 2018
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
ADAM WRIGHT
Senior Counsel
Enforcement Division