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

11 In the Matter of:) NMLS FILE NO.: 1756184
12)
13 THE CALIFORNIA COMMISSIONER OF) ORDER DENYING MORTGAGE LOAN
BUSINESS OVERSIGHT,) ORIGINATOR LICENSE APPLICATION
14)
15 Complainant,)
16 v.)
17 AUSTIN TYLER LEE,)
18 Respondent.)
19 _____)

20 The California Commissioner of Business Oversight (Commissioner) finds that:

21 1. On July 25, 2018, Respondent filed an application for a Mortgage Loan Originator
22 License with the Commissioner under the California Residential Mortgage Lending Act (CRMLA)
23 (Financial Code, § 50000 et seq.), pursuant to Financial Code section 50140¹. Respondent submitted
24 his application to the Commissioner by filing a Form MU4 through the Nationwide Mortgage
25 Licensing System (NMLS).

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

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

4 3. Upon reviewing Respondent’s Form MU4, the Department discovered that, in the
5 Superior Court of New Jersey, Camden County, on October 5, 2016, Respondent pled guilty to one
6 count of possession of a controlled substance with intent to distribute (N.J. Stat. Ann. § 2C:35-
7 5a.(1), 5b.(12)) (Conviction). (*See State of New Jersey v. Lee*, Case No. 16-10-02745-A, Superior
8 Court of New Jersey, Camden County [complaint filed on October 5, 2016].) Respondent was
9 sentenced in accordance with his guilty plea on December 2, 2016. The Conviction constitutes a
10 felony for purposes of Section 50141. (N.J. Stat. Ann. § 2C:35-5(a)(1), 5(b)(12) [defining the
11 Conviction as a crime of the fourth degree]; *id.* § 2C:43-6 [crimes of the fourth degree subject to
12 imprisonment up to 18 months].)²

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

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

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

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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”].)

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7. 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:

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

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

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

10. On December 7, 2018, the Commissioner issued a Notice of Intention to Deny Application for Mortgage Loan Originator License, Statement of Issues in support thereof, and accompanying documents based on the above findings. On December 10, 2018, Respondent was served with these documents at the latest address on file. The documents were received and signed for at the address on file on December 15, 2018. Respondent did not request a hearing and the time to request a hearing has expired.

11. 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.

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NOW GOOD CAUSE APPEARING THEREFORE, it is hereby ordered that the application for a mortgage loan originator license of Austin Tyler Lee is denied. This order is effective as of the date hereof.

Dated: January 25, 2019
Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division