

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of

THE COMMISSIONER OF BUSINESS
OVERSIGHT,

Complainant,

v.

CHRISTOPHER PARDEE AUSTIN

Respondent.

OAH No. 2017120269

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated September 10, 2018, is hereby adopted in its entirety by the Department of Business Oversight as its Decision in the above-entitled matter pursuant to Government Code section 11517(c)(2)(A).

This Decision shall become effective on December 17, 2018.

IT IS SO ORDERED this 16th day of November, 2018.



COMMISSIONER OF BUSINESS OVERSIGHT

Jan Lynn Owen
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In the Matter of:

THE COMMISSIONER OF BUSINESS
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vs.

CHRISTOPHER PARDEE AUSTIN,

Respondent.

NMLS NO.: 251456

CAH No. 2018060886

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on August 13, 2018, in Oakland, California.

Paul Yee, Senior Counsel, represented complainant Jan Lynn Owen, Commissioner of Business Oversight.

Respondent Christopher Pardee Austin represented himself.

The matter was submitted for decision on August 13, 2018.

FACTUAL FINDINGS

Introduction

1. The Commissioner of Business Oversight is charged with licensing mortgage loan originators in the State of California pursuant to Financial Code section 50002. A mortgage loan originator is an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. (Fin. Code, § 50003.5, subd. (a).)

2. Following the nationwide financial crisis commonly referred to as the “mortgage meltdown,” the United States Congress passed the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” (SAFE Act). (12 U.S.C. § 5101 et seq.) The SAFE Act implemented safeguards for consumers by requiring any person that accepts a consumer mortgage application or a consumer mortgage secured by residential property to register with the public database of mortgage loan originators, Nationwide Mortgage Licensing System (NMLS). The SAFE Act was designed to enhance consumer protection and reduce fraud through the setting of minimum standards for state licensing and registration of mortgage loan originators. In California, a state-issued mortgage loan originator license is obtained from the Department of Business Oversight (Department), and a mortgage loan originator license endorsement is obtained from the Department of Real Estate (DRE).

Respondent’s Application

3. Christopher Pardee Austin (respondent) was first issued a mortgage loan originator license by the Department on July 20, 2010. On May 22, 2017, respondent filed an application for renewal of his mortgage loan originator license pursuant to Financial Code section 50140. The application was for approval of employment with, or working on behalf of, HomeStreet Bank, located in San Luis Obispo, California. The application was submitted to the Commissioner of the Department by the filing of Form MU4 through NMLS. On May 24, 2017, the application was approved, but placed on inactive status.

4. Questions (K)(3) and (K)(6) of the Form MU4 application ask:

(K) Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever:

[¶] . . . [¶]

(3) found you to have been a cause of a financial-service related business having its authorization to do business denied, suspended, revoked or restricted?

[¶] . . . [¶]

(6) denied or suspended your registration or license or application for licensure, disciplined you, or otherwise by order, prevented you from associating with a financial service-related business or restricted your activities?

5. Respondent answered “no” to both questions. Respondent attested that the answers were true and complete to the best of his knowledge. By signing the attestation, respondent acknowledged that, if he had made a false statement of a material fact in his application or in any documentation provided in support of the application, his application could be denied.

Denial of Application based on Undisclosed Discipline Imposed by the DRE

6. The DRE denied respondent's application for a real estate salesperson license on January 12, 2000, and January 26, 2009. The denials were based on respondent's convictions for burglary, engaging in a motor vehicle speed contest and possession of a controlled substance in 1998; driving under the influence in 1998, 1999 and 2003; receiving stolen property in 2003; and driving with a suspended license in 1999, 2002 and 2005.

7. On May 8, 2015, by stipulated settlement, the DRE issued respondent a restricted real estate broker license.

8. In October 2016, the DRE suspended respondent's restricted real estate broker license and issued an accusation seeking to revoke his license and licensing rights. The accusation alleged that respondent had failed to disclose certain information on his application for a mortgage loan originator endorsement, which he filed through NMLS. Specifically, the DRE alleged that respondent failed to disclose information regarding unsatisfied personal judgments and prior license denials and restrictions by the DRE. The question concerning prior license denials and restrictions was Question (K)(6) on the Form MU4, one of the questions at issue here.

9. Respondent requested a hearing, which took place on November 14, 2016, and January 26, 2017. At hearing, respondent testified that he did not intend to deceive the DRE, but had misunderstood the question because he did not interpret real estate activities to constitute a "financial-service related business."

The DRE issued a decision on April 20, which was filed on April 26, and effective on May 16, 2017. The Chief Deputy Commissioner of the DRE adopted a proposed decision by an administrative law judge (ALJ) who found that respondent had made material misstatements on the application, including his failure to disclose the adverse actions taken by the DRE. The decision noted that in the NMLS Policy Guidebook, located on the NMLS website, "financial services-related" is defined as "Pertaining to . . . consumer debt management or real estate (including, but not limited to, acting as or being associated with . . . a mortgage lender, mortgage broker, real estate salesperson or agent. . . ."

However, the ALJ found that it was inconceivable that respondent would intentionally attempt to hide the DRE's own actions from it, noting that the restricted license had been issued the prior year. As a result, the ALJ found that respondent's misstatement did not reflect fraudulent intent. Nevertheless, the ALJ found that the misstatements reflected the submission of incorrect information under circumstances where accuracy was required. Respondent was found to lack financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that he would operate honestly, fairly, and efficiently. Respondent's application for a mortgage loan originator endorsement was denied by the DRE based on his nondisclosures.

Based on character evidence presented and the fact that respondent had held a mortgage loan originator license with the Department since 2010 without incident, the DRE allowed respondent to maintain his broker license, but it extended the duration of the restriction on the license by two years.

Department's Denial of Respondent's Renewal Application

10. Respondent filed his renewal application with the Commissioner on May 22, 2017, several months after testifying about his confusion concerning Question (K)(6), and a month after receiving the DRE's decision finding that his answer constituted a material misstatement.

11. On May 24, 2017, after a review of respondent's application and his licensing history with the DRE, the Commissioner instructed respondent to amend his MU4 application and to provide a detailed explanation with supporting documentation regarding the adverse action taken by the DRE.

12. On August 21, 2017, respondent amended his response to questions (K)(3) and (K)(6) from "no" to "yes." Respondent provided an explanation and the DRE decisions. In his explanation, respondent stated that when he filled out the application, he did not consider "financial-service related business" to include real estate activities or adverse actions taken by the DRE.

13. The Commissioner concluded that respondent's May 22, 2017 renewal application omitted material facts, constituting grounds to revoke his mortgage loan originator license. The Commissioner issued a notice of intent to issue an order revoking respondent's mortgage loan originator license, and an accusation in support thereof, on May 16, 2018. Respondent filed a notice of defense and this hearing followed.

Respondent's Evidence

14. Respondent points out that the original adverse actions taken by the DRE were based on his criminal history, which he has always disclosed to the Department. Respondent has obtained expungements for at least some of his convictions.

15. Respondent reiterated that he did not understand Questions (K)(3) and (K)(6) to pertain to real estate activities, and that he did not intend to deceive the Department when he completed his renewal application through NMLS. He reports that he did not answer the question differently after the DRE hearing and after receiving the DRE decision because he and his attorney were considering an appeal to superior court concerning the denial of his mortgage loan endorsement application.

16. Respondent has worked in the mortgage loan industry since 1999. From 1999 to 2008, he worked at American Independent Mortgage in San Luis Obispo, rising to the

position of general manager. From December 2008 until April 2009, he was unemployed due to the mortgage meltdown.

17. From April 2009 until October 2009, respondent worked as a loan officer with Envoy Mortgage Limited in San Luis Obispo. Respondent was employed by Gem Mortgage in Arroyo Grande as a mortgage banker from November 2009 until August 2010. He worked for Bayburg Financial from November 2010 until April 2011. From August 2011 until February 2012, respondent worked as the branch manager and a loan officer at Open Mortgage in Paso Robles. From February 2012 until August 2012, he worked as a senior loan officer at Prime Lending in Arroyo Grande. From August 2012 until June 2013, respondent worked as a loan officer at Paramount Residential Mortgage Group in Paso Robles. From June 2013 until January 2016, he was employed as the branch manager at Primary Residential Mortgage in Paso Robles. From January until September 2016, respondent worked as a sales manager at Prospect Mortgage. From September 2016 until May 2017, he was employed as the regional manager at All Western Mortgage.

Since May 2017, respondent has been employed as a vice-president and branch manager at HomeStreet Bank in San Luis Obispo. He manages the operational staff, receptionist, underwriters and loan officers.

18. Respondent presented a forensic psychological evaluation by Craig R. Lareau, J.D., Ph.D., dated November 9, 2016. Dr. Lareau interviewed respondent and administered psychological testing. Respondent disclosed to Dr. Lareau his years of alcoholism and the difficulties and poor judgment he experienced in his youth. Respondent has been married to his second wife since 2005; he reported that his wife has helped him maintain his sobriety and change his life in a positive way. Dr. Lareau does not consider respondent to be a risk to the public as a mortgage loan originator.

19. Respondent now understands that his answers were incorrect. Respondent apologized and expressed remorse for his error.

20. Respondent has not been accused of fraud, misrepresentation or other misconduct in his work as a mortgage loan originator.

21. Respondent submitted character letters from several friends and colleagues, all of whom report being aware of respondent's incorrect answers to Question (K) of Form MU4. Will Majano reports that respondent did a "great job" handling his loan application. Thomas Becker has been a client of respondent's for over five years and has found him trustworthy. Robert Stoner has known respondent for over 10 years and reports that he has a great reputation in the mortgage industry. Robert Mariani praises respondent's work and ethics. Wayne Lockwood worked with respondent and considers him an exemplary individual and mortgage loan originator. Sheila Brown worked for respondent for two years and reports that he took his fiduciary responsibilities very seriously. Wendy Barnes worked closely with respondent and considered his loan files to be of the highest quality. Varoujan Kurkeverian has worked with respondent and considers him to be very honest.

Amy Austin, respondent's wife, wrote a letter praising his work and describing him as a wonderful husband and father. Raenell Sandercock, respondent's mother-in-law, wrote a letter vouching for respondent's devotion to his family.

22. Brian Barnes testified in support of respondent's licensure. He has worked in the mortgage loan industry since 1980 and is licensed by the Department, the DRE and the Federal Deposit Insurance Corporation. Barnes also did not perceive financial services licenses to include real estate licenses; he understands why respondent made the mistake on his application. Barnes hired respondent to be the branch manager at Primary Residential Mortgage. Barnes oversaw respondent's work and reviewed his files. Barnes never observed any indication of fraud or malfeasance by respondent; he considered respondent's work to be exceptional.

23. Troy Myrick testified in support of respondent's licensure. Myrick does not work in the mortgage industry. He has known respondent for 30 years and they are good friends. Myrick considers respondent to be honest, ethical, fair and trustworthy. Respondent has handled at least three loan applications for Myrick, who has been very satisfied with respondent's work.

LEGAL CONCLUSIONS

1. Financial Code section 50513 authorizes the Commissioner to revoke a mortgage loan originator license if the licensee withholds information or makes a material misstatement on an application for a license renewal.

Respondent made material misstatements on his application when he answered Questions (K)(3) and (K)(6) on Form MU4. (Factual Findings 4 through 13, and 19.) Cause therefore exists for the Commissioner to revoke respondent's mortgage loan originator license pursuant to Financial Code section 50513.

2. Financial Code section 50327 provides that the Commissioner may revoke a mortgage loan originator license if the Commissioner finds that any fact exists that, if it had existed at the time of the application for the license, reasonably would have warranted the Commissioner to refuse to issue the license. When the Commissioner initially issued respondent's mortgage loan originator license, and when the license was renewed on May 24, 2017, she was unaware that respondent had made material misstatements on the application. The fact of the misstatements would have warranted the Commissioner to refuse to issue and to renew the license. Cause to revoke respondent's license therefore exists pursuant to Financial Code section 50327.

3. Pursuant to Financial Code sections 50141 and 50513, the Commissioner must revoke a mortgage loan originator license if the applicant has not demonstrated such financial responsibility, character, and general fitness 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 Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.).

Respondent has held a mortgage loan originator license with the Department since 2010 and has worked in the industry for 20 years. There is no evidence of any complaints by consumers concerning his work as a mortgage loan originator. Respondent is currently a vice president and the branch manager of HomeStreet Bank. He has presented evidence from satisfied clients and colleagues in the industry, including the testimony of a former supervisor. Respondent disclosed his criminal history to the Department, which served as the basis for the adverse actions taken in 2000 and 2009 by the DRE. (Factual Findings 14 through 23.)

Respondent may well have misunderstood Question (K) when he completed his application in 2010. However, respondent did not explain his failure to answer Question (K) properly on May 24, 2017. Respondent completed the renewal application after the DRE alleged that he had made a material misstatement on this very question, after he attended a two-day DRE hearing on this subject, after he testified as to his misunderstanding of the question, and one month after he received a decision from the DRE in which his mortgage loan originator endorsement was denied because he had answered the question incorrectly. (Factual Finding 9.)

Moreover, the DRE decision quotes the NMLS Policy Guidebook, located on the NMLS website, wherein “financial services-related” is defined as “Pertaining to . . . consumer debt management or real estate (including, but not limited to, acting as or being associated with . . . a mortgage lender, mortgage broker, real estate salesperson or agent” (Factual Finding 9.) Despite having been explicitly advised of this definition one month prior to completing the renewal application, respondent again misstated his answers to the questions. Respondent’s misstatements were either intentional or they demonstrated a lack of fitness to complete financial statements and applications – a skill at the heart of the mortgage loan originator’s business.

As such, respondent has failed to demonstrate such financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that he will operate honestly, fairly, and efficiently within the purposes of the Residential Mortgage Lending Act. Cause to revoke respondent’s mortgage loan originator license has been established pursuant to Financial Code sections 50141 and 50513. Therefore, respondent’s mortgage loan originator license must be revoked.

ORDER

The mortgage loan originator license of respondent Christopher Pardee Austin is revoked.

Dated: September 10, 2018

DocuSigned by:
Jill Schlichtmann
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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings