

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF BUSINESS
OVERSIGHT,

Complainant,

v.

BEN ALEXANDER-OWENS ANDERSON,

Respondent.

Case No. 320166

OAH No. 2018050193

ORDER OF DECISION

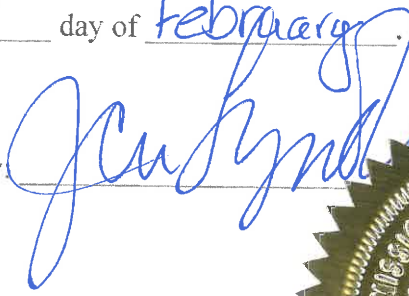
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on March 23, 2019.

IT IS SO ORDERED this 21st day of February.

By



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PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on November 6, 2018, in Los Angeles, California.

Kenny V. Nguyen and Blaine Noblett, Counsel with the Department of Business Oversight (Department), appeared and represented complainant Jan Lynn Owen, Commissioner of Business Oversight (Commissioner).

Frederick M. Ray, Attorney at Law, appeared and represented respondent Ben Alexander-Owens Anderson who was present throughout the hearing.

The parties submitted the matter for decision at the conclusion of the hearing on November 6, 2018.

FACTUAL FINDINGS

1. On March 29, 2018, Kenny V. Nguyen, acting on behalf of complainant and in his official capacity as Senior Counsel for the Department, brought the First Amended Accusation In Support of Order revoking Mortgage Loan Originator License of Ben Alexander-Owens Anderson. Respondent timely submitted a Notice of Defense.

2. On June 2, 2010, respondent filed an application for a mortgage loan originator license. The application was for employment as a mortgage loan originator and was submitted to the Commissioner when respondent completed and filed an Individual Filing Statement (Form MU4) through the Nationwide Mortgage Licensing System and Registry (NMLS).

3. In respondent's initial Form MU4 dated June 2, 2010, respondent was required to answer the following questions:

(C) Do you have any unsatisfied judgments or liens against you?

(H)(1) Has any domestic or foreign court ever . . . enjoined you in connection with any financial services related activity?

(H)(2) Is there a pending financial services related civil action in which you are named for any alleged violation described in (H)(1)?

(Ex. 6, pp. 44-45.)

4. Respondent answered "no" to each of the above questions. He also signed an oath and attestation agreeing to keep the information contained in the Form MU4 "current and to file accurate supplementary information on a timely basis."¹ (Ex. 6, p. 47.)

5. Based on the representations made by respondent in his application, the Department issued respondent mortgage loan originator license number 320166 on August 11, 2010. As required by the application procedures, respondent designated his employer Mount Olympus Mortgage Company, Inc. (MOMCO) as his sponsoring entity.

Fraud and Misappropriation

6. When employed by MOMCO, respondent signed a Standards of Conduct policy. Respondent acknowledged that acts of "dishonesty, theft, or embezzlement," or the disclosure of "confidential information to a competitor" was prohibited and may result in employment discipline, including termination of employment. (Ex. 13.) MOMCO's Employee Handbook further provided that "no MOMCO records, files or MOMCO-related information may be removed from MOMCO's premises or disclosed to any outside party without the express permission from MOMCO." (Ex. 14.)

¹ A licensee is required to "promptly file an amendment" to the Form MU4 "upon any change in the information contained in an application for license." (Cal. Code Regs., tit. 10, § 1950.122.9, subd. (a).)

7. On July 1, 2011, MOMCO promoted respondent to the position of Team Lead. Upon promotion, respondent signed a superseding agreement which “incorporated the terms and conditions of the MOMCO Employee Handbook.” (Ex. 15, p. 192.) The agreement provided that respondent would be entrusted with confidential information, which expressly included customers, prospective customers, and customer records. Per the agreement, respondent agreed that he would not disclose, use or make available for anyone to use any confidential information without the written consent of MOMCO and that he would use his “best efforts, to prevent the unauthorized publication or misuse of any confidential information.” (Ex. 15, pp. 190-191.)

8. In 2014, Michael Arnall was the president of MOMCO. He testified that respondent became one of the “top mortgage loan originators in the country,” but that his production began to decrease dramatically in 2014.” When Mr. Arnall discussed the cause for respondent’s decrease in production, respondent explained that his wife had a miscarriage and it was important for him to spend time with his family.

9. Respondent did not disclose to anyone at MOMCO that, beginning in March 2014, he had negotiated to work for Guaranteed Rate, Inc. (Guaranteed Rate). On April 18, 2014, while still employed at MOMCO, respondent executed a Branch Manager Compensation Plan with Guaranteed Rate. (Ex. 22.) Pursuant to the Compensation Plan, respondent’s compensation was to be based “upon a fixed percentage of the loans amounts (basis points) for each first or second lien mortgage originated (not including HELOCs) by [respondent] that is closed and funded by [Guaranteed Rate] within the month.” (Ex. 22, p. 213.) By an addendum to the Compensation Plan, Guaranteed Rate agreed to pay respondent a draw against commissions, and to pay monthly bonuses based on respondent’s loan production. (Ex. 22, pp. 218-221.)

10. Without MOMCO’s knowledge or consent, respondent began uploading from MOMCO’s database copies of customer loan applications, bank statements, tax returns, appraisals, and other related confidential and proprietary information relating to pending loans. The records contained each customer’s name, address, social security number, and other confidential data. Respondent then transferred the uploaded materials to Guaranteed Rate for processing. During the transfer of files, respondent did not disclose in writing to the customers that their confidential financial information was being moved from MOMCO to Guaranteed Rate. Jacquelynn Koteru was employed as a loan processor at MOMCO at the time. She testified that she overheard respondent inform “a handful” of clients that he was leaving MOMCO and ask permission to take their loans to Guaranteed Rate.

11. Mr. Arnall testified that, by June 2014, respondent’s loan originations at MOMCO “disappeared” and that he “found out why.” On June 5, 2014, MOMCO discharged respondent from his employment and terminated his access to the company’s database.

12. On June 10, 2014, MOMCO notified all potentially impacted customers of respondent's activities by delivering a form letter describing his unauthorized solicitation of their business.

13. On June 19, 2014, MOMCO initiated a civil lawsuit against respondent in Orange County Superior Court (case number 30-2014-00729438-CU-PT-CJC). The complaint in the lawsuit alleged that respondent conspired with Guaranteed Rate to defraud MOMCO and misappropriate its confidential and proprietary information. The civil complaint sought to enjoin respondent from profiting from the information obtained from MOMCO. MOMCO served respondent with a summons and complaint on June 30, 2014.

14. The lawsuit proceeded to a trial. On March 22, 2016, a jury found that respondent was liable on eight causes of action asserted against him, including fraud, breach of fiduciary duty, conversion, and misappropriation of confidential information. The jury further found that respondent "engaged in the conduct with malice, oppression, or fraud, so as to warrant punitive damages." (Ex. 47, p. 452.) The jury deliberated and awarded \$500,000 in punitive damages against respondent. An amended judgment was entered in favor of MOMCO and against respondent in the amount of \$5,607,000 for lost profits, plus \$215,654 in punitive damages.² (Ex. 47, p. 453.) The judgment is final.³

Nondisclosure of Financial Service Litigation

15. Between June 2014 and June 2016, respondent filed no Form MU4.

16. On June 16, 2016, respondent amended his Form MU4 to disclose the litigation with MOMCO. Respondent provided an explanation that there had been a jury trial, a verdict in favor of MOMCO, and that he was considering an appeal.

Nondisclosure of Liens

17. On September 23, 2008, the Franchise Tax Board recorded a Notice of State Tax Lien against respondent for income tax owed in 2006 and 2007, with an unpaid balance of \$14,769.03. (Ex. 8.)

18. On November 14, 2008, the Internal Revenue Service filed a notice of federal tax lien for unpaid income taxes assessed in 2007 and 2008 in the total unpaid balance of \$16,579.21. (Ex. 9.)

² A claim for punitive damages is evaluated under the clear and convincing evidentiary standard. (*Basich v. Allstate Ins. Co.* (2001) 87 Cal.App.4th 1112, 1119–1120.)

³ Respondent testified that he filed an appeal of the judgment and that the appeal was settled for a confidential amount.

19. On May 8, 2013, the Internal Revenue Service recorded a Certificate of Release of Federal Tax Lien, certifying that respondent satisfied the assessed taxes including all statutory additions. On June 26, 2013, the Franchise Tax Board recorded a Release of Lien.

20. On March 7, 2016, respondent provided a financial statement to the Superior Court as mitigation evidence in the civil action, listing a liability described as “Mechanics Lien – Santa Ana” in the amount of \$15,000. (Ex. 46.) The evidence did not establish whether or when the mechanic’s lien was recorded.

21. Respondent did not disclose any liens on his initial Form MU4 dated June 2, 2010. At the time, the tax liens were not yet satisfied. Respondent did not disclose the existence of any liens on any subsequent Form MU4, except that he reported that the tax liens had been paid off in 2018.

Mitigation and Rehabilitation

22. John Glenn Stevens is the president of Cornerstone Mortgage Group, a mortgage company. He testified that he came to know respondent when they both worked at Guaranteed Rate. He recruited respondent in 2017 to another company at a time when he was aware of the litigation with MOMCO. During the interview process, respondent made “extra efforts to disclose and to make sure that nothing like that would ever happen again.” Mr. Stevens testified that respondent’s job performance was “fantastic” and that he received no customer complaints. He further testified that respondent is “a good man, a great father,” and that when respondent makes a mistake, he goes overboard to correct it.

23. Sophia Faletese has applied for five to six loans with respondent. She owns multiple properties and respondent has helped her with “personal difficulties.” She testified that she would not use respondent’s services if she felt he was dishonest. She understands that the Commissioner is taking disciplinary action against respondent’s license, but she has not read the First Amended Accusation and is unaware of the specific allegations against respondent. She testified that she was not concerned if respondent misappropriated her confidential information because she believes her “information is already out there.”

24. Jacquelynn Koterio is now a senior loan processor at PRMG, a mortgage company. She has known respondent since 2005. She testified that respondent is “relentless, hard-working, loyal to his clients, and never gives up.”

25. Reverend John M. Anderson married respondent’s mother and adopted respondent during his childhood. In a character reference letter, Rev. Anderson described respondent as having “grown and matured into a man who is amazing,” and wrote about respondent’s charitable activities with the Bay Area Rescue Mission. (Ex. C.) In an article published on Yahoo.com, respondent reportedly “spends the day before each Thanksgiving preparing and serving food to those in need” and recently donated \$25,000 to the organization. (Ex. D.) Sherwin Harris, an officer of Bay Area Rescue Mission, wrote: “Respondent’s contributions enabled our organization to appeal to our youth to stay out of

gangs and succumbing to negative environments. I know without a doubt he helped to instill a greater desire for our kids to strive and to become social responsibility [*sic*] and to strive for [a purposeful] future.” (Ex. C.) Respondent testified that he has also been “a strong supporter of the Unstoppable Foundation for Sustainable Education since 2017.” (Ex. C.)

26. Sylvia Cardenas, a client of respondent, wrote, “We developed a relationship with [respondent] that was built on trust.... From the beginning, [respondent] was always upfront with us on what we were eligible for and never led us astray. [¶] Respondent has always been very straightforward with us on everything. When he left [MOMCO], we were aware of the suit, which did not deter our relationship with him. We chose to follow him to Guaranteed Rate and then to Lend Us. We trust [respondent] and we will continue doing business with him no matter what company he is working for. He is very conscientious and [a] caring person when it comes to his clients and their interests.” (Ex. C.)

27. Barry Habib, Chief Executive Officer with MBS Highway, wrote, “[Respondent] is consistently recognized as one of the top loan officers in the country, but he understands the changing marketplace and is at the forefront of technology. [Respondent] knows how to break it down and allow his students to replicate his teachings into success.” (Ex. C.)

28. Respondent has been described in publications as “one of the top originators in the country.” (Ex. D.) He has received favorable online reviews and survey report cards from past clients. (Ex. E.)

29. Respondent is currently licensed as a mortgage loan originator in 24 other states with no evidence of discipline. He intends to apply for licensure in all 50 states.

30. Respondent testified that he was naïve about the disclosure requirements and that he “did not know about Form MU4 until the lawsuit,” and that he will not steal client files from any other employer in the future.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. A mortgage loan originator must continue to meet the minimum standards for license issuance under Financial Code section 50141. (Fin. Code, § 50144, subd. (b).) The Commissioner may suspend or revoke a mortgage loan originator license if a licensee fails at any time to meet the requirements of Section 50141, or withholds information or makes a material misstatement in an application for a license or license renewal. (Fin. Code, § 50513, subd. (a)(2).)

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3. To meet the requirements of Financial Code section 50141, a licensee must 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 California Residential Mortgage Lending Act].” (Fin. Code, § 50141, subd. (a)(3).)

4. An applicant may be precluded a mortgage loan originator license where his or her personal history includes (a) any liens or judgments for fraud, misrepresentation, or dishonesty dealing, or (b) other liens or judgments that “indicate a pattern of dishonesty on the part of the applicant.” (Cal. Code Regs., tit. 10, § 1950.122.52, subd. (c)(1) and (2).)

5. In this case, respondent associated with Guaranteed Rate on April 18, 2014, and began to systematically upload customer loan applications and related records in MOMCO’s database and, without MOMCO’s knowledge or consent, transfer those loan applications and records to Guaranteed Rate. His new compensation plan with Guaranteed Rate included incentives and bonuses based on the number of loans originated by respondent and funded by Guaranteed Rate. Upon his discharge, respondent was denied access to loan applications that would maximize his commissions and bonuses at Guaranteed Rate. It is reasonably inferable that respondent deliberately withheld informing MOMCO about his association with Guaranteed Rate in order to extend the time within which to access and transfer pending loan applications for his personal gain.

6. A jury in a prior civil action based on the same allegations made in the First Amended Accusation found that respondent engaged in the conduct with malice, oppression, or fraud, so as to warrant punitive damages. Respondent argued that a civil judgment has no binding effect when the factual finding in the prior proceeding was arrived at based on a lower standard of proof than the one required in the subsequent proceeding. (*The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494.) However, the jury verdict against respondent for punitive damages based on fraud was determined on a clear and convincing standard, falling squarely within the exception articulated by the court in the *Grubb* case involving a real estate licensee as follows:

[The Real Estate] Commissioner may impose discipline based on “a final judgment ... in a civil action against any real estate licensee upon grounds of fraud, misrepresentation, or deceit with reference to any transaction for which a license is required,” but only when the plaintiff in the civil action proved fraud, misrepresentation, or deceit *by clear and convincing evidence*. Thus, for example, if the jury in the present case had entered a verdict for punitive damages against Grubb, section 10177.5 would have applied.

(*The Grubb Co., Inc. v. Department of Real Estate, supra*, 194 Cal.App.4th 1494, 1505, emphasis in original.)

7. In addition, respondent misrepresented that he had no unsatisfied liens as of June 2, 2010, when in fact, two prior tax liens were recorded and not paid and released until 2013. Respondent further withheld material information about the pending financial service litigation for two years before making the required public disclosure on Form MU4. Respondent's testimony that he failed to make the required disclosures due to his naiveté is given little weight because he responded to clear and unambiguous questions each time he completed Form MU4.

8. Respondent argued that the purpose of the California Residential Mortgage Lending Act is to protect borrowers, and that respondent's misconduct caused injury to MOMCO, a mortgage lender, but not to any borrowers. This argument overlooks the fact that the customers who did not authorize the transfer of their private data were injured by the breach of their confidential information. Moreover, honesty and truthfulness are essential qualities that bear on one's fitness and qualification to be a licensee. (*Golde v. Fox* (1979) 98 Cal.App.3d 167.) Respondent's dishonesty and lack of truthfulness, including not only his deceptive practices with respect to MOMCO but also his misrepresentations to the public on his Form MU4 filings, exhibit a lack of character that fails to command the confidence of the community or to warrant a determination that he will operate honestly and fairly as a mortgage loan originator.

9. Cause exists to discipline respondent's license under Financial Code sections 50141 and 50144 because he failed to meet the statutory requirements for licensure, and withheld information or made material misstatements in his application for a license and license renewals.

10. Imposing discipline on respondent's license furthers a particular social purpose: the protection of the public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757.) Respondent presented live testimony and character reference letters describing him as one of the top mortgage loan originators in the country, and showing that many customers and employers have been satisfied with respondent's job performance. Respondent has demonstrated that he has engaged in and supported various charitable activities. Respondent has no record of discipline with the Department or any of the 24 states in which he is licensed, and no record of consumer complaints.

11. However, the nature and seriousness of respondent's misconduct included actual harm to MOMCO and to those consumers whose confidential information was misappropriated for respondent's personal gain. Respondent's conduct was knowing and willful, and other than his pledge not steal client files from future employers, respondent has taken no corrective action to ensure that he will operate honestly, fairly, and efficiently within the purposes of the California Residential Mortgage Lending Act. The protection of the public is best served by the revocation of respondent's license.

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ORDER

Complainant's First Amended Accusation is affirmed, and the mortgage loan originator license issued to respondent Ben Alexander-Owens Anderson is revoked.

DATED: December 5, 2018

DocuSigned by:
Matthew Goldsby

MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings