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

11 In the Matter of:) CRMLA License No. 413-0960
12) NMLS No. 142084
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
14) ACCUSATION IN SUPPORT OF NOTICE OF
Complainant,) INTENT TO ISSUE ORDERS SUSPENDING
15) LICENSE AND IMPOSING PENALTIES
16 v.)
17 ALLIANCE FINANCIAL RESOURCES, LLC,)
18 Respondent.)
19)
20)

21 The Complainant, the Commissioner of Business Oversight (“Commissioner”) is informed
22 and believes, and based on such information and belief, alleges and charges Respondent Alliance
23 Financial Resources, LLC (“Alliance”) as follows:

24 **I. Jurisdiction and Venue**

25 1. The Commissioner brings this action under the provisions of the Financial Code
26 sections 50327, subdivision (a)(1), and 50513, subdivisions (a)(4), (b), (c), and (d), and the rules and
27 regulations promulgated thereunder.

28 2. The Commissioner is authorized to administer and enforce the provisions of the

1 California Residential Mortgage Lending Act (Fin. Code § 50000 et seq.) (“CRMLA”) and the
2 regulations issued under title 10, California Code of Regulations (“CCR”) sections 1950.003 et seq.,
3 which regulate the business and activities of residential mortgage lenders and servicers.

4 **II. Statement of Facts**

5 3. Alliance is a residential mortgage lender licensed by the Commissioner under the
6 CRMLA, license number 413-0960, Nationwide Mortgage Licensing System (“NMLS”) number
7 142084. Alliance’s principal place of business is located at 5410 East High Street, Suite 200,
8 Phoenix, Arizona 85054. Alliance employs mortgage loan originators.

9 **The 2010 Regulatory Examination**

10 4. On or about October 12, 2010, the Commissioner commenced a regulatory
11 examination of Alliance (“2010 exam”). The examination revealed numerous violations of the
12 CRMLA, including the following:

13 (a) Commingling Borrower Trust Funds With Operating Funds. Alliance deposited
14 borrower trust funds into its company operating account. As a result, Alliance
15 commingled borrower trust funds with company operating funds in violation of
16 Financial Code section 50202, subdivision (a).

17 (b) Per Diem Interest Overcharges. Alliance charged borrowers per diem interest in
18 excess of one day prior to the date that the loan proceeds were disbursed from escrow,
19 in violation of Financial Code section 50204, subdivision (o), in at least 5 loans. The
20 overcharges ranged from \$30.36 to \$151.14.

21 5. While the 2010 exam was pending, on or around February 17, 2011, Alliance
22 transferred \$7,230.13 from its company operating account to a Wells Fargo trust account ending in
23 0466 to correct the debit balance caused by Alliance’s commingling of borrower trust funds with
24 company operating funds.

25 6. On or around April 18, 2011, the Commissioner notified Alliance of its violations of
26 Financial Code sections 50202, subdivision (a), and 50204, subdivision (o), and directed Alliance to
27 refund the interest overcharged on the 5 listed loans.

28 7. On or around May 4, 2011, Alliance responded to the Commissioner’s notice of April

1 18, 2011, attaching the Wells Fargo trust account statement for the account ending in 0466 to show
2 that borrower funds totaling \$7,230.13 had been deposited into a trust account in February 2011,
3 approximately four months after the Commissioner commenced the 2010 exam, and while it was
4 still pending.

5 8. On or around August 22, 2011, Alliance provided-written proof that Alliance
6 refunded per diem interest overcharges in the amount of \$568.91 to six borrowers, consisting of the
7 five borrowers cited by the Commissioner plus one additional borrower detected after the 2010
8 exam.

9 **The 2013 Regulatory Examination**

10 9. On or around January 4, 2013, the Commissioner commenced a regulatory
11 examination of Alliance ("2013 exam"). The 2013 exam revealed numerous CRMLA violations,
12 including the following repeat violations:

13 (a) Commingling Borrower Trust Funds With Operating Funds. Alliance deposited
14 borrower trust funds into its company operating account. As a result, Alliance
15 commingled borrower trust funds with company operating funds in violation of
16 Financial Code section 50202, subdivision (a).

17 (b) Per Diem Interest Overcharges. Alliance charged borrowers per diem interest in
18 excess of one day prior to the date that the loan proceeds were disbursed from escrow,
19 in violation of Financial Code section 50204, subdivision (o), in 4 out of 18 (or 22%)
20 of the loan files sampled. The overcharges ranged from \$11.24 to \$79.56.

21 10. While the 2013 exam was pending, on or around March 29, 2013, Alliance opened
22 Wells Fargo trust account ending in 8946 and transferred approximately \$28,584.22 from its
23 company operating account to the trust account to correct the debit balance caused by Alliance's
24 commingling of borrower trust funds with company operating funds.

25 11. On or around February 3, 2014, the Commissioner notified Alliance of its violations
26 of Financial Code sections 50202, subdivision (a), and 50204, subdivision (o), both repeat violations
27 from the 2010 exam, in addition to other violations of the CRMLA. The Commissioner instructed
28 Alliance to conduct a self-audit of all loans originated from January 1, 2011 through February 3,

1 2014 and refund all borrowers the amount of per diem interest overcharged plus interest at the rate of
2 10 percent per annum.

3 12. On or around March 5, 2014, Alliance responded with a letter from its Chief
4 Financial Officer stating that Alliance had implemented a new procedure to deposit borrower funds
5 into the trust account. Alliance also enclosed trust account statements for the Wells Fargo trust
6 account ending in 8946 and a MidFirst trust account ending in 9659.

7 13. Alliance included a self-audit report regarding the per diem interest overcharges with
8 its March 5, 2014 written response. The report revealed that in 2012 and 2013, Alliance overcharged
9 121 borrowers per diem interest in the amount of \$9,947.43. On or around April 7, 2014, the
10 Commissioner requested additional documents from Alliance relating to 24 loan files sampled from
11 the self-audit report.

12 14. On or around April 17, 2014, Alliance disclosed that from December 28, 2011 to
13 December 31, 2013, Alliance overcharged 118 borrowers per diem interest in the amount of
14 \$10,073.87. Alliance also confirmed that it refunded these borrowers per diem interest overcharges
15 plus interest in the amount of \$11,462.20. Alliance submitted proof of refunds given to the 24
16 sample loan files requested by the Commissioner.

17 15. By reason of the forgoing, Alliance has violated Financial Code sections 50202,
18 subdivision (a) and 50204, subdivision (o).

19 **III. Law**

20 Financial Code section 50202 provides, in relevant part:

21 (a) Escrow funds for a purpose authorized by the residential mortgage loan
22 contract (1) shall be subject to and satisfy all applicable state and federal
23 requirements . . . and all applicable provisions of the Civil Code, (2) shall
24 be maintained in a depository institution as described in subdivision (b),
and (3) may not be commingled with a licensee's funds.

25 (b) Except as provided in subdivision (f), a trust account shall be placed in
26 a non-interest-bearing account in a federally insured depository institution,
27 a federal home loan bank, a federal reserve bank, or other similar
government-sponsored enterprise, to be removed and used only for the
following:

28 (1) Payments authorized by the borrower, allowed by the mortgage loan

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- contract, or required by federal or state law.
- (2) Refunds to the borrower.
- (3) Transfer to another institution that is described in this subdivision.
- (4) Forwarding to the appropriate servicer in case of a transfer of servicing.
- (5) Any other purpose authorized by the residential mortgage loan contract.
- (6) Compliance with a regulatory or court order.

Financial Code section 50204 provides, in relevant part:

A licensee may not do any of the following:

- (o) Commit an act in violation of Section 2948.5 of the Civil Code. Evidence of compliance with Section 2948.5 of the Civil Code may be evidenced by (1) a certification executed by the licensee, at no cost to the borrower, pursuant to Section 2015.5 of the Code of Civil Procedure, or (2) other evidence in the loan file acceptable to the commissioner.

Financial Code section 50327 provides:

- (a) The commissioner may, after notice and a reasonable opportunity to be heard, deny, decline to renew, suspend, or revoke any license if the commissioner finds that:
 - (1) The licensee has violated any provision of this division or any rule or order of the commissioner thereunder.
 - (2) Any fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.
- (b) The power of investigation and examination by the commissioner is not terminated by the denial, nonrenewal, surrender, suspension, or revocation of any license issued by him or her.

Financial Code section 50513 provides, in relevant parts:

- (a) The commissioner may do one or more of the following:
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 - (4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).
 - (5) Issue orders or directives to mortgage loan originators under this division as follows:
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 - (B) Order or direct a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator

1 to cease any harmful activities or violations of this division, including
2 immediate temporary orders to desist and refrain.

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4 (b) The commissioner may impose a civil penalty on a mortgage loan
5 originator or any residential mortgage lender or servicer licensee
6 employing a mortgage loan originator, if the commissioner finds, on the
7 record after notice and opportunity for hearing, that the mortgage loan
8 originator or any residential mortgage lender or servicer licensee
9 employing a mortgage loan originator has violated or failed to comply
10 with any requirement of this division or any regulation prescribed by the
11 commissioner under this division or order issued under authority of this
12 division.

13 (c) The maximum amount of penalty for each act or omission described in
14 subdivision (b) shall be twenty-five thousand dollars (\$25,000).

15 (d) Each violation or failure to comply with any directive or order of the
16 commissioner is a separate and distinct violation or failure.

17 **IV. Conclusion**

18 The Commissioner finds that, by reason of the foregoing, Alliance Financial Resources, LLC
19 has repeatedly violated Financial Code sections 50202, subdivision (a) and 50204, subdivision (o).

20 Therefore, grounds exist to:

- 21 (1) suspend Alliance Financial Resources, LLC’s CRMLA residential mortgage lender
22 license pursuant to Financial Code section 50327, subdivision (a)(1); and
- 23 (2) levy penalties against Alliance Financial Resources, LLC pursuant to Financial Code
24 section 50513, subdivisions (a)(4), (b), (c), and (d).

25 WHEREFORE, IT IS PRAYED that:

- 26 1. Under Financial Code section 50327, subdivision (a)(1), Alliance Financial
27 Resources, LLC’s residential mortgage lender license be suspended for up to 12 months.
- 28 2. Under Financial Code section 50513, subdivisions (a)(4), (b), (c), and (d), penalties in
the amount of at least \$143,000.00 be levied against Alliance Financial Resources, LLC for:
 - a. commingling borrower trust funds with company operating funds, in violation of
Financial Code section 50202, subdivision (a), a penalty in the amount of
\$25,000.00 or according to proof;

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b. overcharging at least 118 borrowers per diem interest from December 28, 2011 to December 31, 2013, in violation of Financial Code section 50204, subdivision (o), a penalty in the amount of at least \$1,000.00 per violation, for an amount of at least \$118,000.00, or according to proof.

Dated: February 26, 2016
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Danielle A. Stoumbos
Counsel, Enforcement Division