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

12 In the Matter of:) NMLS No.: 1238232
)
13 THE COMMISSIONER)
14 OF BUSINESS OVERSIGHT,)
)
15 Complainant,) STATEMENT OF ISSUES IN SUPPORT
) OF NON-ISSUANCE OF MORTGAGE
16 v.) LOAN ORIGINATOR LICENSE
)
17 MICHAEL RYAN BARNETT,)
)
18 Respondent.)
19 _____)

20
21 The Complainant, the Commissioner of Business Oversight (“Commissioner”), is informed
22 and believes and, based upon that information and belief, alleges and charges Michael Ryan Barnett
23 (“Respondent”) as follows:

24 I.
25 INTRODUCTION

26 The proposed order seeks to deny the mortgage loan originator license application of the
27 Respondent pursuant to Financial Code section 22109.1 in that the Respondent has been convicted of
28 a felony and has been subject to regulatory actions by the California Bureau of Real Estate (“BRE”)

1 (formerly known as the Department of Real Estate) and the Maryland Office of the Attorney General.
2 As a result thereof, the Respondent does not have the character or general fitness to warrant a
3 determination that he will operate with honesty as required by section 22109.1.

4 II.

5 THE APPLICATION

6 2. On November 13, 2014, the Respondent filed an application for a mortgage loan originator
7 license with the Commissioner pursuant to section 22109.1 of the California Finance Lenders Law
8 (“CFL”) (Fin. Code, § 22000 et seq.).¹ The application was for employment with or working on
9 behalf of Assent, Inc. as a mortgage loan originator, which employer has its principal place of
10 business located at 18881 Von Karmon, Unit 1075, Irvine, California. The Respondent submitted his
11 application to the Commissioner by filing Form MU4 through the Nationwide Mortgage Licensing
12 System & Registry (“NMLS”).

13 3. On the Form MU4, the Respondent answered “Yes” to Criminal Disclosure question (F)(1),
14 which states:

15 (F)(1) Have you ever been convicted of or pled guilty or nolo contendere (“no contest”) in a
16 domestic, foreign, or military court to any felony?

17 4. On the Form MU4, the Respondent also answered “Yes” to Regulatory Action Disclosure
18 questions (K)(2), (K)(4), (K)(8), and (M), which inquire:

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

21 . . .

22 (2) found you to have been involved in a violation of a financial services-related
23 business regulation(s) or statute(s)?

24 . . .

25 (4) entered an order against you in connection with a financial services-related
26 activity?

27 . . .

28 (8) issued a final order against you based on violations of any law or regulations that
prohibit fraudulent, manipulative, or deceptive conduct?

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

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...

(M) Based upon activities that occurred while you exercised control over an organization, has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever taken any of the actions listed in (K) through (L) above against any organization?

5. On January 12, 2015, the Commissioner created license items in NMLS, instructing the Respondent to provide explanation and upload supporting documentation for his affirmative responses to, inter alia, Criminal Disclosure question (F)(1) and Regulatory Action Disclosure questions (K)(2), (K)(4), and (K)(8).

6. On January 16, 2015 and January 21, 2015, the Respondent filed amendments and uploaded documentation through the NMLS in further support of his application.

III.

FELONY CONVICTION

7. Documentation and information obtained by the Commissioner during the application process disclosed that on October 28, 2004, the Respondent was convicted of felony theft and unlawful taking or driving of a vehicle in violation of Penal Code section 10851, subdivision (a).

8. Financial Code section 22019.1, subdivision (a)(2)(A), provides:

(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, or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

9. The Respondent's above-referenced felony conviction for theft and unlawful taking or driving of a vehicle, in violation of Penal Code section 10851, subdivision (a), requires the Commissioner to deny the Respondent's application under section 22109.1, subdivision (a)(2)(A) because the conviction constitutes a felony conviction involving an act of fraud, dishonesty, a breach of trust, or

1 money laundering.

2 IV.

3 REGULATORY ACTIONS

4 10. Documentation and information obtained by the Commissioner during the application process
5 revealed the following regulatory actions:

6 (a) On or about July 30, 2009, the BRE issued a Desist and Refrain Order against the
7 Respondent for performing and/or participating in loan modification activities which require a license
8 under Business and Professions Code sections 10131, subdivision (d), and 10131.2 during a period of
9 time when he was not licensed by the BRE in any capacity; and,

10 (b) On December 9, 2013, the Maryland Office of the Attorney General entered a Final Order
11 by Consent, whereby the Respondent agreed to pay restitution and admitted to offering and selling
12 loan modification and foreclosure prevention services by collecting advance fees and making
13 material misrepresentations or omissions in violation of the Maryland Consumer Protection Act.

14 V.

15 CHARACTER OF THE RESPONDENT

16 11. Financial Code section 22019.1, subdivision (a)(3) provides:

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

19 . . .

20 (3) The applicant has demonstrated such financial responsibility, character, and general fitness
21 as to command the confidence of the community and to warrant a determination that the
22 mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of
23 this division.

24 12. The Respondent's conduct leading to the BRE's entry of a Desist and Refrain Order for
25 unlicensed activity, as well as his subsequent conduct for similar unlicensed activities leading to the
26 above-referenced regulatory action taken by the State of Maryland, show his failure to demonstrate
27 such financial responsibility, character, and general fitness as to command the confidence of the
28 community and to warrant a determination that he will operate honestly, fairly, and efficiently as a

1 mortgage loan originator.

2 V.

3 CONCLUSION

4 13. By reason of the foregoing, the Commissioner cannot make a minimum finding that: (1) the
5 Respondent has not been convicted of a felony that involved an act of fraud, dishonesty, or a breach
6 of trust; and, (2) the Respondent has demonstrated the financial responsibility, character, or general
7 fitness to warrant a determination that he will act honestly, fairly, and efficiently as a mortgage loan
8 originator under the CFLL.

9 THEREFORE, section 22109.1 mandates that the Commissioner deny the mortgage loan
10 originator license application of the Respondent under the CFLL.

11 WHEREFORE IT IS PRAYED that the determination of the Commissioner to deny a
12 mortgage loan originator license to the Respondent, in connection with the Respondent's application
13 dated November 13, 2014, and all subsequent amendments, be upheld.

14
15 DATED: May 18, 2015
16 Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

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18 By _____
19 MIRANDA LEKANDER
20 Senior Counsel
21 Enforcement Division
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