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

12 In the Matter of the Petition for Reinstatement
13 of:

) NMLS NO.: 173983

14 OCTAVIO AGUIRRE CAPACETE

) **ORDER DENYING PETITION FOR
REINSTATEMENT OF MORTGAGE
LOAN ORIGINATOR LICENSE**

) **(Govt. Code, § 11522)**
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1 Petitioner, Octavio Aguirre Capacete (“Capacete”), filed a petition for reinstatement of
2 mortgage loan originator (“MLO”) license revoked in proceedings entitled *In the Matter of the*
3 *Accusation of the California Corporations Commissioner v. Octavio Aguirre Capacete*, OAH Case
4 No. 2011120589 (“Revocation Proceeding”). The final decision from the Revocation Proceeding
5 became effective on or about March 23, 2012 (“Decision”). Capacete filed a petition for
6 reinstatement of MLO license with the Department of Business Oversight (“Department” or
7 “Commissioner”) on April 23, 2015. Capacete also filed a supplemental petition for reinstatement of
8 MLO license on or about October 2, 2015 (collectively, “Petition”).

9 This agency, having considered the Petition, finds that Petitioner Capacete is not entitled to
10 reinstatement of a MLO license for the following reasons:

11 1. Capacete’s violations of the Mortgage Loan Originator Law, as set forth in the
12 findings of the Administrative Law Judge in the Revocation Proceeding, are so egregious that the
13 standard is not met to warrant the grant of a MLO license. Pursuant to Financial Code section 50141,
14 one must demonstrate such "character and general fitness as to command the confidence of the
15 community and to warrant a determination that the mortgage loan originator will operate honestly,
16 fairly, and efficiently within the purposes of this division." (Cal. Fin. Code §50141). Capacete was
17 found to have knowingly cheated on the MLO license examination and then compounded that wrong
18 by bribing the test center administrator. The Administrative Law Judge stated in the Decision that
19 “These facts demonstrate that respondent did not meet the criteria for good character and the
20 Department should not have issued him a license in the first place.” The act of cheating on the
21 license exam and then bribing a proctor to further the fraud upon the Commissioner and the MLO
22 industry is inherently not indicative of good character sufficient to warrant the grant of a MLO
23 license then or now, even when considering the Petition. Therefore, the Petition must be denied as the
24 standard set forth by Financial Code section 50141 is not met.

25 2. The Department is required by Financial Code section 50141 to insure that Capacete
26 has gained the requisite good character to insure that Capacete will not be a threat to the public as a
27 MLO licensee. An insufficient amount of time has passed since the mortgage loan originator license
28 was revoked to warrant a finding that Capacete demonstrates the "character and general fitness as to

1 command the confidence of the community and to warrant a determination that the mortgage loan
2 originator will operate honestly, fairly, and efficiently within the purposes of this division”. (Cal.
3 Fin.Code §50141). Only approximately three (3) years have passed since the Decision was issued.
4 When considering the egregiousness of the misconduct, this is not a sufficient amount of time to
5 insure that Capacete has completely rehabilitated himself and to ensure that Capacete has gained the
6 requisite character required for a MLO license through personal growth and experience.

7 3. Capacete fails to demonstrate, by way of his Petition, that he now possesses the
8 requisite character to be granted a MLO license and no longer poses a threat to the public given his
9 past misconduct by way of the following:

10 a. Capacete has not undergone any noteworthy or extensive ethics training.
11 Although Capacete has taken two electronic examinations entitled “ethics” noted in the Petition, it is
12 unclear whether these examinations address Capacete’s personal character, which is what is at issue
13 here. Capacete also highlights his nursing courses as being persuasive as to his “good character”.
14 However, there is no mention of his personal study of ethics or character as a whole. There is no
15 evidence that Capacete has engaged in any counseling, professional or otherwise.

16 b. Capacete agreed to follow the Nationwide Mortgage Licensing System &
17 Registry Rules of Conduct during the MLO license exam which led to the Decision. Then, Capacete
18 knowingly violated the same rules, thus exhibiting Capacete’s dishonest, untrustworthy nature and
19 unprofessional disregard for the mortgage loan originator profession and its rules. Also, Capacete
20 disobeyed the rules of the exam and knowingly went away from a permitted area into an unpermitted
21 area of the test center . This act also exemplifies that Capacete has a disregard for rules set forth by
22 the profession. The Petition makes no mention of this or what steps Capacete has taken to remedy
23 this mindset and behavior.

24 4. It should be noted that Capacete has other means of earning a living aside from any
25 living that may be earned with a MLO license. He may be employed at a nationwide financial
26 institution, as he previously was, and also has a myriad of employment options in other careers aside
27 from the mortgage industry. Capacete attests that his new career goal is nursing. Capacete claims that
28 he wants his MLO license back only to generate income to fund his new career in nursing education

1 or nursing. It appears that Capacete is not committed to working in the mortgage industry or the
2 protection of consumers in that industry.

3 5. As indicated above, Capacete fails to demonstrate, by way of his Petition and written
4 argument, that he no longer poses a threat to the public given his past misconduct and that he is
5 capable of holding a MLO license without engaging in unlawful conduct. Capacete has failed to
6 provide adequate and sufficient independent corroborating evidence in support of his claim of
7 rehabilitation.

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9 WHEREFORE, IT IS ORDERED that the Petition be denied.

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Dated: January 4, 2016
Sacramento, California

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Commissioner of Business Oversight

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By _____

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MARY ANN SMITH
Deputy Commissioner
Enforcement Division

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