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

11 In the Matter of:) NMLS NO. 202137
12 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) AMENDED STATEMENT OF ISSUES
13)
14 Complainant,)
15 v.)
16 NICHOLAS STEPHEN CARABBA,)
17 Respondent.)
18

19 The Complainant, the Commissioner of Business Oversight (“Commissioner”) files this
20 Amended Statement of Issues to initiate this matter under the California Finance Lenders Law
21 (CFLL) (Fin. Code, § 22000 et seq.) rather than the California Residential Mortgage Lending Act
22 (CRMLA) (Fin. Code § 50000 et. seq.), as originally brought. Specifically, the Commissioner
23 intends to deny the issuance of a mortgage loan originator license to Respondent Nicholas Stephen
24 Carabba (Respondent) under Financial Code section 22109.1 of the CFLL rather than section 50141
25 of the CRMLA and as such, finds as follows:

26 I.

27 INTRODUCTION

28 The proposed order seeks to deny the issuance of a mortgage loan originator license to

1 Respondent in that he fails to demonstrate the requisite financial responsibility, character, and
2 general fitness due to a prior bankruptcy and previously having had his real estate broker license
3 revoked for failure to exercise reasonable supervision and control as a designated officer, including
4 in the supervision of salespersons, in the solicitation of borrowers and lenders and in negotiating
5 loans on real property.

6 II.

7 THE APPLICATION

8 1. On March 9, 2015, Respondent filed an application for a mortgage loan originator license
9 with Complainant pursuant to the CFLL, in particular, Financial Code section 22105.1. The
10 application was for employment as a mortgage loan originator with or working on behalf of St.
11 Fin Corp located at 23330 Mill Creek Drive, Suite 250, Laguna Hills, California 92653. The
12 application was submitted to the Commissioner by filing a Form MU4 through the Nationwide
13 Mortgage Licensing System & Registry (NMLS)

14 2. In submitting his application, Respondent answered “yes” to question (A)(1) on the Form
15 MU4, which specifically asked: “Have you filed a personal bankruptcy petition or been the subject
16 of an involuntary bankruptcy petition within the past 10 years?”

17 3. Supporting documentation provided by Respondent of his bankruptcy shows that on April
18 29, 2008, he was granted a chapter 7 discharge under the Bankruptcy Code. (11 U.S.C. § 727.)

19 4. In addition, Respondent initially falsely answered no and failed to provide a detailed
20 explanation and supporting documentation to question (K)(5) on the Form MU4 which specifically
21 asked:

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

24 . . .

(5) revoked your registration or license?

25 5. A review of the California Bureau of Real Estate (BRE, formerly known as the Department
26 of Real Estate) public license information on its website revealed that on April 3, 2012, the BRE had
27 revoked a license issued to Respondent. Consequently, Respondent was instructed to amend his
28 response and provide a detailed explanation and supporting documentation. Thereafter, on May 13,

1 2015, Respondent amended his response to question (K)(5) from “no” to “yes”, but again did not
2 submit supporting documentation. Respondent was again instructed to contact the BRE or visit its
3 website to obtain and submit the requested information. On May 14, 2015, Respondent submitted
4 supporting documentation regarding his license revocation.

5 6. In submitting his application, Respondent signed the Form MU4 swearing that the answers
6 were true and complete to the best of Respondent’s knowledge.

7 III.

8 REAL ESTATE BROKER LICENSE REVOCATION

9 7. Documentation and information obtained by the Commissioner during the application
10 process revealed that on March 18, 2011 a default order was filed against Serenity Enterprises, Inc.,
11 doing business as New Harvest Mortgage (Serenity Enterprises), and Respondent, individually and
12 as designated officer thereof, and that a decision was filed on June 10, 2011 revoking the real estate
13 broker licenses of each, effective June 30, 2011. On June 13, 2011 Respondent and Serenity
14 Enterprises requested a hearing and on June 30, 2011, the default order and decision were set aside
15 allowing the Accusation filed on October 21, 2008 to proceed to hearing which was then set for
16 February 1, 2012. Again, Respondent and Serenity Enterprises failed to appear after being duly
17 notified and another default was ordered against them on February 22, 2012.

18 8. The BRE’s action against Respondent revealed that Serenity Enterprises and Respondent, as
19 its designated officer, brokered multiple loans on different properties for borrowers all as their
20 primary residences, while employing an unlicensed sales agent. The respondents there acted as the
21 mortgage and real estate broker, including soliciting borrowers and lenders and negotiating loans on
22 real property for which they received a commission at closing for the loans. The decision found that
23 Respondent knew these borrowers closed on their loans under the false premise that each property
24 would be their primary residence. Further, due to the higher risk related to investment properties,
25 the BRE found that lenders would not have likely approved the loans for the terms granted had the
26 respondents disclosed that the properties were actually investments.

27 9. As Serenity Enterprise’s designated officer, Respondent was responsible for the supervision
28 and control of the activities conducted on behalf of the corporation by its officers and employees to

1 ensure full compliance with the real estate laws, including the supervision of salespersons licensed to
2 the corporation in the performance of acts for which a real estate license is required. By clear and
3 convincing proof to a reasonable certainty, the BRE determined that Respondent willfully
4 disregarded the law and made substantial misrepresentations in violating Business and Professions
5 Code sections 10137 and 10159.2 by employing an unlicensed agent and failing to adequately
6 supervise and control the activities of Serenity Enterprises. The BRE therefore revoked all licenses
7 and license rights of Respondent and Serenity Enterprises.

8 IV.

9 CHARACTER OF THE RESPONDENT

10 10. Financial Code section 22109.1 provides in relevant part:

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

14 . . .

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

20 . . .

21 11. Respondent’s personal bankruptcy and conduct leading to the revocation of his real estate
22 license shows Respondent’s failure to demonstrate such financial responsibility, character and
23 general fitness as to command the confidence of the community and to warrant a determination that
24 he will operate honestly, fairly, and efficiently as a mortgage loan originator. He failed to exercise
25 reasonable supervision and control as the designated officer, including in the supervision of
26 salespersons, in the solicitation of borrowers and lenders and in negotiating loans on real property.
27 As designated officer, he brokered multiple loans on different properties for borrowers all as their
28 primary residences, while employing an unlicensed sales agent for which he received commissions
at closing for the loans. Respondent knew these borrowers closed on their loans under the false
premise that each property would be their primary residence. He willfully disregarded the law and
made substantial misrepresentations while employing an unlicensed agent and failing to adequately
supervise and control the activities of Serenity Enterprises, a financial-services related business

1 responsible for the proper treatment of funds pertaining to mortgage loans.

2 V.

3 CONCLUSION

4 Complainant finds, by reason of the foregoing, that Respondent’s prior bankruptcy and
5 conduct leading to the revocation of his real estate license fails to demonstrate such character and
6 general fitness as to command the confidence of the community and to warrant a determination that
7 he will operate honestly, fairly, and efficiently as a mortgage loan originator.

8 THEREFORE, Complainant is mandated under Financial Code section 22109.1 to deny
9 Respondent’s mortgage loan originator license application under the CFLL.

10 WHEREFORE notice is hereby given of the Commissioner’s intention to deny the mortgage
11 loan originator application filed by Respondent on March 9, 2015.

12 Dated: March 24, 2017
13 Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

15 By: _____
16 LINDSAY B. HERRICK
17 Counsel

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