

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF BUSINESS
OVERSIGHT,

Complainant,

v.

ARLA DiSABATINO,

Respondent.

NMLS No. 1587904

OAH No. 2017100153

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 August 5, 2018.

IT IS SO ORDERED this 6th day of July, 2018.

By: Jane Lynn



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PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 5, 2018, in Los Angeles, California.

Kelly Suk and Blaine A. Noblett, Counsel with the Department of Business Oversight (Agency), appeared and represented complainant the California Commissioner of Business Oversight (Commissioner).

No appearance was made by or on behalf of respondent Arla DiSabatino.

The matter was submitted for decision at the conclusion of the hearing on April 5, 2018.

FACTUAL FINDINGS

Background and Jurisdiction

1. On February 2, 2017, respondent filed an application with the Commissioner for a Mortgage Loan Originator (MLO) License. Respondent submitted her application by filing Form MU4 (Application) through the Nationwide Mortgage Licensing System (NMLS). The Application is now pending, and no license has been issued pursuant to the Application.

2. On August 22, 2017, the Commissioner brought the Statement of Issues acting in his official capacity.

3. On August 8, 2017, respondent filed a timely Notice of Defense.

4. On November 1, 2017, complainant mailed a Notice of Hearing to respondent at her address of record. The notice informed respondent that a hearing would take place on April 5, 2018, and furnished the correct address for the hearing location. The notice informed respondent that she may be present at the hearing and summarized her rights.

Felony Convictions

5. On January 13, 2003, respondent entered a guilty plea and was convicted of the following federal crimes: (1) making a false representation of a Social Security number in a Bankruptcy petition willfully affecting another's credit in violation of 42 U.S.C. section 408(a)(7)(b), a felony; and (2) causing an act to be done in an offense against the United States in violation of 18 U.S.C. section 2(b), a felony. (*United States v. Waxman*, Docket No. CR 02-1264-NM.)

6. The court placed respondent on probation for three years. The probationary terms and conditions included the following orders: to reside for six months in a community corrections center; to pay fines in the principal sum of \$5,000, plus interest; to pay a special assessment in the sum of \$200 ; to have no more than one individual checking account in her name, unless otherwise preapproved by the probation officer; not to obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification in any name, other than respondent's true legal name, without the prior written approval of her probation officer; and to pay her attorney fees in the sum of \$4,452.96 in monthly installments of not less than \$150 per month.

7. The facts and circumstances of the conviction relate to two bankruptcy petitions filed by respondent. On or about September 29, 1999, respondent filed a bankruptcy petition, falsely representing that her name was Alan Altman and that his Social Security number was 134-50-XXXX. On November 18, 1999, respondent filed a bankruptcy petition, falsely representing that her name was Carol Weill and that her Social Security number was 215-42-XXXX. (Ex. 4.)

Bankruptcy filings

8. On April 11, 1996, respondent filed a voluntary bankruptcy petition under Chapter 7 of the United States Bankruptcy Code (Case No. 96-bk-13885-AG). The United States Bankruptcy court granted a discharge on August 8, 1996.

9. On August 9, 1999, respondent filed a voluntary bankruptcy petition under Chapter 13 of the United States Bankruptcy Code (Case No. 99-bk-19492-AG). The United States Bankruptcy Court dismissed the petition on August 26, 1999.

10. On January 25, 2000, respondent filed a voluntary bankruptcy petition under Chapter 13 of the United States Bankruptcy Code (Case No. 00-bk-10763-AG). The United States Bankruptcy Court dismissed the petition on February 10, 2000.

11. On April 12, 2002, respondent filed a voluntary bankruptcy petition under Chapter 7 of the United States Bankruptcy Code (Case No. 02-bk-13378-KT). The United States Bankruptcy Court closed the case on February 29, 2008 with "no discharge." (Ex. 9.)

Judgment Lien

12. Judgment creditors David Brown and Kelly Moran-Brown, by and through their attorney Gregory J. Ramirez, recorded an Abstract of Judgment against respondent with the County Recorder for Ventura County on January 24, 2002, (instrument number DOC-2002-001-9053-00), and with the County Recorder for Los Angeles County on October 27, 2006 (instrument number 06 2391894).

13. The judgment lien was in the principal amount of \$170,000. No evidence was presented to show that respondent satisfied the lien.

Disciplinary Actions

14. On August 11, 1990, the Department of Real Estate, which now operates under the name Bureau of Real Estate (BRE), issued to respondent real estate salesperson license 01085091. On September 22, 1992, the BRE issued to respondent a real estate broker license.

15. On September 4, 1996, the BRE Commissioner revoked respondent's broker license. Based on rights granted in the revocation order, respondent applied for and obtained a restricted broker's license on November 15, 1996. (Ex. 14, p. 0088.)

16. Effective February 9, 1999, the BRE revoked respondent's restricted broker license based on findings of fact made by an administrative law judge after a two-day hearing, including, but not limited to, the following:

3. During the months of December 1996 and January 1997, Respondent undertook to purchase a home in Thousand Oaks, California. At that time Respondent was then living in Bell Canyon, California, with her husband and two children, a toddler and an infant.

4. Respondent set about purchasing the new home without the knowledge of her husband, whom she intended to leave. Her plan was to separate from him without notice, as she considered him abusive and dangerous to her and the welfare of her children.

5. In order to carry out her plan, Respondent applied for the loan in her parents' name, and purported to act only as the broker in the transaction. To support the loan application, she systematically forged numerous documents and submitted them to a corporate lender. The forged documents included bank statements as well as an altered check. [Respondent] made it appear as if two separate bank accounts held by her were actually controlled by her parents. Further, the documents were also altered to misrepresent the balance in those accounts.

6. Respondent concealed the fact that she was actually buying the Thousand Oaks property because she did not want the lender to know that she was then married. If the lender knew of her marriage status, it would typically want her husband's assent, or his quitclaim deed renouncing any interest in the house, before making the loan.

7. Through these acts, Weyerhaeuser Equity Services was induced to loan \$500,000.00 to the purported buyers of the property.

(Ex. 12, p. 0080.)

17. On August 31, 2000, the BRE issued an Order to Desist and Refrain against respondent, after determining that respondent continued to engage in activities requiring a real estate license after her real estate broker license was revoked. (Ex. 13.)

Disclosures in the Application

18. At question (D) of the Application, respondent was asked: "Do you have any unsatisfied judgments or liens against you?" (Ex. A.) Respondent answered "no." The answer was false because there is no evidence to show that the judgment lien on respondent's record was satisfied. (Factual Findings 12-13.)

19. At question (F) of the Application, respondent was asked: "Have you ever been convicted or pled guilty or nolo contendere in a domestic, foreign, or military court to any felony?" (Ex. A.) Respondent answered "yes," and explained the conviction as discussed below at Factual Finding 23.

20. At question (K) of the Application, respondent was asked: "Has any state or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever: [¶] (1) found you to have made a false statement or omission or been dishonest, unfair or unethical? [¶] (2) found you to have been involved in a violation of a financial service-related business regulation or statute? [¶] . . . [¶] (5) revoked your registration license? [¶] (6) denied or suspended your registration or license or application for licensure, discipline due, or otherwise by order, prevented you from associating with a

financial services related to this or restricted activities? [¶] . . . [¶] (9) entered an order concerning you in connection with any license or registration?” (Ex. A.) Respondent answered “no” to questions (1) and (2), and answered “yes” to questions (5), (6), and (9), explaining the regulatory action discussed below at Factual Finding 23.

21. At question (P) of the Application, respondent was asked: “Have you ever been named as a respondent/defendant in a financial service-related consumer-initiated arbitration or civil litigation which: . . . resulted in an arbitration award or civil judgment against you, regardless of amount, or that required corrective action?” (Ex. A.) Respondent answered “no.”

22. At question (Q) of the Application, respondent was asked: “Have you ever voluntarily resigned, been discharged, or permitted to resign after allegations were made that accused you of: (1) violating statute(s), regulations(s), or industry standards of conduct? (2) fraud, dishonesty, theft, or the wrongful taking of property?” (Ex. A.) Respondent answered “no” to both questions.

23. Respondent uploaded to the Application a written statement explaining her criminal disclosure and regulatory action disclosure as follows:

(A) With respect to the conviction described at Factual Findings 5-7, respondent wrote, “Just as things were starting to look up around 2001 or 2002, I was contacted by federal investigators asking questions about the bankruptcy I filed for mom while we were trying to save the house from [foreclosure] sale. In the haste to file, I had somehow mixed up the last two numbers of my mom’s social and this had unintentionally affected the credit of another. I agree to accept fault for the error with the understanding that my mother would be spared from questioning. . . . The investigators promised that as long as I cooperated, I would receive a probationary sentence and they would leave Mom [sic] alone.” (Ex. C.)

(B) With respect to the regulatory action taken by the BRE described at Factual Findings 14-17, respondent wrote, “In January 1997 (20 years ago) I left [my ex-husband] in fear for my life as he swore ‘the only way out of the marriage was with a bullet in [my] head.’ Out of fear and to keep my kids safe, I did many things I deeply regret and of which I am ashamed and embarrassed. [¶] My mother offered to help me escape. We purchased a home in her name. We characterized the source of the down-payment and mortgage payments from my mom even though they were from me. My ex-husband . . . filed a complaint with the [BRE] to expose the misrepresentations and I was called for a hearing. I admitted to the wrong-doing and accepted the revocation of my RE license.” (Ex. C.)

24. On February 14, 2017, the Agency requested respondent to provide further information relating to the disclosures made in her Application. (Ex. D.)

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25. February 28, 2017, respondent filed an amended application, and imported her written statement into the online fields relating to her disclosures. In addition, she furnished a copy of the criminal minutes relating to her arraignment, but the court records did not explain the nature of the charges.

26. On March 21, 2007, respondent filed a second amended application to include more records relating to the conviction, including a Judgment and Probation Commitment Order, a copy of the case docket, and the charging pleadings. (Ex. K.)

LEGAL CONCLUSIONS

Standard of Proof

1. In a hearing to determine whether a license should be granted or issued, the applicant must show compliance with the statutes and rules governing the license by producing proof at the hearing. (Gov. Code, § 11504; *Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471.)

2. The standard of proof upon the applicant for a license is a preponderance of the evidence. (Evid. Code, § 115.)

Governing Law

3. Financial Code sections 22109.1 and 50141 provide:

(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.

[¶ . . . ¶]

(3) The applicant has demonstrated 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 this division.

Disposition

4. In this case, respondent was convicted of a felony in 2003. Although the conviction was more than seven years ago, the felony involved acts of fraud and dishonesty in that making false representations of a Social Security number in a Bankruptcy petition inherently involves dishonesty as an essential element. (*Serrato-Soto v. Holder* (2009) 570 F.3d 686.)

5. The evidence fails to demonstrate that respondent possesses the requisite financial responsibility. She has voluntarily filed for bankruptcy relief on four occasions, three of those filings resulting in a dismissal of the petition or no discharge. Moreover, respondent has a judgment lien against her with no evidence to show that she has satisfied the obligation.

6. Respondent's failure to fully disclose the disciplinary actions taken by the BRE is evidence that she lacks the character and general fitness as to command the confidence of the community and to warrant a determination that she will operate honestly, fairly, and efficiently within the purposes of the laws governing an MLO license.

7. Notice of the hearing was given as required by law, and respondent was notified of her right to be present at the hearing. (Gov. Code, § 11509, Factual Finding 4.) Nonetheless, respondent failed to appear at the hearing and present evidence of rehabilitation or mitigation.

8. Cause exists to deny the Application because the Commissioner cannot make, at a minimum, the findings required at Financial Code sections 22109.1, subdivision (a)(2)(A) and (3), and 50141.

ORDER

The Statement of Issues against respondent Arla DiSabatino is affirmed, and her application for a Mortgage Loan Originator license is denied.

DATED: April 19, 2018

DocuSigned by:

Matthew Goldsby

MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings