

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against

DENNISE GURFINKIEL

Respondent.

Case No. 327471

OAH No. 2016120605

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated March 21, 2017, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on July 22, 2017.
IT IS SO ORDERED this 22 day of June, 2017.


IAN LYNN OWEN
Commissioner of Business Oversight

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Second Amended
Statement of Issues Against:

DENNISE GURFINKIEL,

Respondent.

Case No. 327471

OAH No. 2016120605

PROPOSED DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on February 28, 2017.

Senior Counsel for the Department of Business Oversight, Johnny O. Vuong and Counsel, Vanessa T. Lu, represented complainant, the Commissioner of Business Oversight.

Respondent, Dennise Gurfinkiel, received notice of the date, time and place of the hearing; however, she failed to appear.

Complainant elected to proceed with a default prove-up, the default evidence was presented, department counsel made closing statements, and the matter was submitted on February 28, 2017.

FACTUAL FINDINGS

Jurisdiction

1. On March 29, 2016, respondent filed an application for a mortgage loan originator (MLO) license by submitting a Form MU4 through the Nationwide Mortgage Licensing System (NMLS). Respondent omitted certain information so complainant, through NMLS, instructed respondent to submit an amended MU4 containing the necessary information. On May 23, 2016, respondent submitted an amended MU4.

2. During the application review process it was discovered that respondent's former employer, Bay Equity LLC, had terminated her and filed a complaint regarding her with complainant.

3. On August 19, 2016, complainant served respondent with a Notice of Intention to Deny Mortgage Loan Originator Application, a Statement to Respondent, a Statement of Issues, pertinent Government Code sections, and a blank Notice of Defense.

4. Respondent timely filed a Notice of Defense, the Statement of Issues was amended twice and the instant hearing ensued.

Facts Underlying Respondent's Bay Equity LLC Employment Termination

5. Mr. Richard Jones, Bay Equity's Regional Sales Manager in charge of the San Diego markets, testified concerning respondent's employment with, and termination from, Bay Equity. His testimony is summarized in the following factual findings.

6. On May 23, 2014, respondent signed, and thereafter submitted to Bay Equity, a Loan Originator Employment Agreement. The employment agreement contained the following provisions: "2.7 Payments. All loan fees, commissions, and/or other income generated in connection with Loan Originator's loan origination activity shall be made payable to Employer"; "2.11 Gratuities and Gifts. Loan Originator shall not accept any gratuity, gift or tip from a borrower or client unless such gratuity, gift or tip is legally permissible, fully disclosed, and Loan Originator has received the prior written consent of the Chief Operations Officer of Employer"; and "2.17 Prohibited Acts . . . taking any instrument in which blanks are left to be filled in after execution of the instrument. . . ." (Exh. 13). As part of the agreement respondent received a notice entitled "**LOAN FRAUD – ZERO TOLERANCE.**" The notice stated, in pertinent part:

Some Types of Loan Fraud

1. Submission of inaccurate information, including false statement on loan application (s) and/or falsification of documents purporting to substantiate credit, employment, deposit and asset information including identity, ownership/non-ownership of real property, etc.
2. Forgery of partially or predominantly accurate information. . .
. (Exh. 13, pg. 141, bold in original)

Additionally, respondent received a copy of the Bay Equity "Employee Handbook." The handbook set forth, in greater detail, the "standards of conduct." (Exh. 15)

7. On September 29, 2014, Bay Equity notified respondent of her "involuntary termination" based on "Lack of production." (Exh. 16) Respondent's employment termination was effective on October 1, 2014. Sometime after respondent's employment termination, Bay Equity was contacted by Ms. Ma De Lourdes Topete, a Bay Equity client for whom respondent provided MLO services. Mr. Rick Jones, manager of Bay Equity testified that, "had I known the information [provided by Ms. Topete] at the time of [respondent's] termination, the termination documents would have indicated she [respondent] was terminated for cause."

Evidence Concerning Respondent's MLO Activities Associated with Ms. Topete

8. A friend of Ms. Topete recommended that she contact respondent concerning refinancing her house to "reduce her loan." Ms. Topete contacted respondent and respondent met Ms. Topete at Ms. Topete's house. Respondent told Ms. Topete that she could get a refinance loan and "reduce her loan – insurance and taxes." Respondent did not have Ms. Topete complete and/or sign any documents; however, respondent orally agreed to obtain a "refinance loan" on Ms. Topete's behalf.

9. On June 2, 2014, respondent asked Ms. Topete to issue her a check in the amount of \$2,389.44 payable to "Peoples Escrow Mngmt." \$2,389.44 was the monthly mortgage amount Ms. Topete had been paying to the original lender, Wells Fargo Bank, so Ms. Topete was led to believe that the \$2,389.44 was being used to pay her monthly mortgage payment through a new lender as part of the refinancing process. In fact, none of the \$2,389.44 was used to pay Ms. Topete's current loan or applied towards the refinancing of the loan. Ms. Topete testified that she did not write the payee, "Peoples Escrow Mngmt" on the check.

10. On July 1, 2014, respondent met with Ms. Topete at Ms. Topete's home and had her sign a check in the amount of \$2,389.44 payable to "People[s] Escrow." Respondent wrote "People[s] Escrow way over to the left" of the payee line on the check. Later, respondent, without Ms. Topete's knowledge, added "or Dennise Gurfinkiel" as a payee and then deposited the \$2,389.44 to her (respondent's) personal bank account. There was a memo, "0020195392" on the check. Respondent told Ms. Topete that the number was the "new loan" number; however, respondent did not provide any details concerning the "new loan" to Ms. Topete and as of July 1, 2014, Ms. Topete had not signed any documents pertaining to a "new loan." In actuality, there was no "new loan."

11. On August 1, 2014, respondent had Ms. Topete write a check for \$1,935.05 payable to "Citi Bank NA." Respondent told Ms. Topete that this was her new payment "including taxes and interest." Respondent told Ms. Topete that the note "Loan 1405001766" represented her "new loan" number. Ms. Topete still had not signed any loan documents and respondent told her that "next month" they would "go to the office for signing."

12. On September 2, 2014, respondent had Ms. Topete write another check in the amount of \$1,935.05 payable to "Citi Bank." Later, respondent, without Ms. Topete's knowledge, added "or Dennise Gurfinkiel" as a payee and the notation "Loan # 0020195392." Respondent negotiated the check and deposited the \$1,935.05 into her own, personal bank account.

13. On September 30, 2014, respondent had Ms. Topete write a final check in the amount of \$1,935.05. Respondent "filled out the check." Respondent wrote "bank" as payee and Ms. Topete signed the check. Respondent told Ms. Topete that "this is the last check you will give to me because you will receive future notification from CitiBank." Respondent congratulated Ms. Topete and her husband and said "this is it." Later, without Ms. Topete's knowledge, respondent added her own name as payee and deposited the funds into her personal bank account.

14. Eventually, Wells Fargo Bank notified Ms. Topete that it had not received any mortgage payments for several months and if Ms. Topete did not make all of the mortgage payments the bank was going to pursue collection actions, including foreclosure. As a result of this notification, Ms. Topete contacted CitiBank and discovered that there was no loan in her name with CitiBank and that CitiBank had received no checks/monies from Ms. Topete. In sum, respondent fraudulently obtained \$13,427.86 from Ms. Topete. As of the date of this hearing respondent had not returned any money to Ms. Topete, Ms. Topete did not obtain a refinance loan, and she was six months behind in her mortgage payments. Eventually, Ms. Topete confronted respondent and respondent "admitted she had engaged in fraud and asked for forgiveness." As a result of respondent's misconduct, Ms. Topete experienced financial and emotional harm.

LEGAL CONCLUSIONS

Denial of MLO Application

1. California Financial Code sections 22109.1 and 50141 provide, in part:

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

[¶] . . . [¶]

(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. . . .

2. Financial Code section 50503 provides, in part:

(a) It is a violation for any person subject to this law . . . to do any of the following:

[¶] . . . [¶]

(2) Knowingly or recklessly make or cause to be made any misstatement or omission of a material fact, pertaining to a loan or loan servicing.

3. The facts set forth in Findings 8 through 14 established causes for denial of respondent's MLO application.

Cause to Bar Respondent

4. Financial Code section 50318 provides, in part:

(a) The commissioner may, after appropriate notice and opportunity for hearing by order . . . bar from any position of employment, management, or control any . . . person, if the commissioner finds either of the following:

(1) That the . . . bar is in the public interest and that the person has committed or caused a violation of this division or rule . . . and (A) the violation was either known or should have been known by the person committing or causing it, or (B) the violation has caused material damage to the . . . public.

5. Based on Findings 8 through 14, causes exist to issue a bar order against respondent pursuant to Financial Code section 50318.

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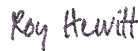
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ORDERS

1. Respondent Dennise Gurfinkiel's MLO application is denied.
2. Respondent Dennise Gurfinkiel is barred from any position of employment, management, or control of any residential mortgage lender, residential mortgage servicer, or mortgage loan originator.

Dated: March 21, 2017.

DocuSigned by:

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ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings