

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 JUDY L. HARTLEY (State Bar No. 110628)
Senior Counsel
4 Department of Business Oversight
320 West 4th Street, Ste. 750
5 Los Angeles, California 90013-2344
Telephone: (213) 576-7604
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

10
11 In the Matter of:) CRMLA License No.: 413-1180
)
12 THE COMMISSIONER OF BUSINESS) ACCUSATION
13 OVERSIGHT,)
)
14 Complainant,)
)
15 v.)
)
16 GMH MORTGAGE SERVICES LLC doing)
17 business as BESTRATEUSA,)
)
18 Respondent.)
19)

20 The Complainant is informed and believes, and based upon such information and belief,
21 alleges and charges Respondent as follows:

22 I

23 **Introduction**

24 1. GMH Mortgage Services LLC dba BestRateUSA (“GMH”) is licensed by the
25 Commissioner of Business Oversight ("Commissioner" or "Complainant") as a residential mortgage
26 lender pursuant to the California Residential Mortgage Lending Act ("CRMLA") (Fin. Code §50000
27 et seq.). GMH has its principal place of business located at 625 West Ridge Pike, Building C, Suite
28

1 100, Conshohocken, Pennsylvania 19428. GMH employs mortgage loan originators in its CRMLA
2 business.

3 **II**

4 **Unlicensed Servicing**

5 2. Pursuant to Financial Code section 50002 of the CRMLA, it is illegal to engage in the
6 business of servicing residential mortgage loans without first obtaining a license from the
7 Commissioner.

8 3. Financial Code section 50003, subdivision (g) defines “Engage in the business” as:
9 “The dissemination to the public, or any part of the public, by means of written,
10 printed, or electronic communication or any communication by means of recorded
11 telephone messages or spoken on radio, television, or similar communications
12 media, **of any information relating to** the making of residential mortgage loans,
13 **the servicing of residential mortgage loans**, or both. **‘Engage in the business’**
14 **also means**, without limitation, making residential mortgage loans or **servicing**
15 **residential mortgage loans**, or both”. (Emphasis added)

16 4. Financial Code section 50003, subdivision (q) defines “mortgage servicer” or
17 “residential mortgage loan servicer” as:
18 “a person that (1) is an approved servicer for the Federal Housing Administration,
19 Veterans Administration, Farmers Home Administration, Government National
20 Mortgage Association, Federal national Mortgage Association, or Federal Home
21 Loan Mortgage Corporation, and directly services or **offers to service mortgage**
22 **loans.**” (Emphasis added).

23 5. Financial Code section 50003, subdivision (x) defines “service” or “servicing” as:
24 “receiving more than three instalment payments of principal, interest, or other
25 amounts held in escrow, pursuant to the terms of a mortgage loan and performing
26 services by a licensee relating to that receipt or the enforcement of its receipt, on
27 behalf of the holder of the note evidencing the loan.”

28 6. On or about December 28, 2015, the Commissioner, by and through staff,
commenced a regulatory examination of the books and records of GMH under the CRMLA
 (“regulatory examination”). The regulatory examination disclosed that GMH was engaged in the
 business of servicing residential mortgage loans without a license in violation Financial Code section
 50002.

1 7. The regulatory examination disclosed a subservicing agreement entered into between
2 GMH and Provident Funding (“Provident”) on December 13, 2012 wherein Provident would service
3 mortgage loans in which GMH was the owner of the servicing rights.

4 8. On or about April 12, 2016, the Department of Business Oversight (“Department”)
5 notified GMH through the Nationwide Mortgage Licensing System (“NMLS”) that it was engaging
6 in the business of residential mortgage loan servicing without a license by posting a license item.
7 The license item notified GMH that it needed to identify the authority under which it was conducting
8 servicing activity.

9 9. On or about June 29, 2016, GMH applied to add residential mortgage loan servicing
10 authority to its CRMLA license by submitting a California Residential Mortgage Lending Act
11 Amendment to the Commissioner.

12 10. The residential mortgage loan application of GMH was incomplete, so on or about
13 July 14, 2016, GMH was notified through NMLS by posting a license item that the documents
14 submitted did not include compliance with the California Homeowners Bill of Rights. Despite
15 numerous communications between the parties since July 2016, GMH has yet to provide the
16 Commissioner with a loss mitigation policy that meets the requirements of the California
17 Homeowners Bill of Rights (Assembly Bill 278 (2012)). Accordingly, the Commissioner has not yet
18 approved the residential mortgage loan servicing application of GMH.

19 11. A review of the Report of Principal Amount of Loans Originated and Aggregate
20 Amount of Loans Serviced (“Loan Report”) filed by GMH with the Commissioner and the Mortgage
21 Call Reports (“MCR”) filed by GMH in NMLS, discloses continuous servicing activity in 2015 and
22 into 2016. However, documents obtained during the regulatory examination disclose that GMH may
23 have been engaged in the business of servicing back in 2014. The MCR’s filed by GMH in NMLS
24 disclose loans serviced in California for the period ended December 31, 2015 numbering 123 with a
25 total unpaid principal balance of \$33,427,217.00. Those numbers jumped to 170 with an unpaid
26 principal balance of \$44,217,422.00 as of June 30, 2016.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III

Penalty Statute

12. Financial Code section 50513 provides in pertinent part:

(a) The commissioner may do one or more of the following:

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

IV

Conclusion

13. The Commissioner finds that, by reason of the foregoing, GMH has violated Financial Code section 50002, and based thereon, grounds exist to assess penalties against GMH pursuant to Financial Code section 50513, subdivision (b).

V

Prayer

WHEREFORE, IT IS PRAYED that:

Pursuant to the Financial Code section 50513, subdivision (b), penalties be levied against GMH for at least 170 violations of Financial Code section 50002, engaging in unlicensed

////

////

1 servicing activities, according to proof, but in an amount of at least \$500.00 per violation.

2 Dated: November 14, 2016
3 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

4 By _____
5 Judy L. Hartley
6 Senior Counsel
7 Enforcement Division

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28