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

11 In the Matter of:) NMLS FILE NO. 694065
12)
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) STATEMENT OF ISSUES IN SUPPORT OF
14) NOTICE OF INTENTION TO ISSUE ORDER
Complainant,) DENYING MORTGAGE LOAN
15) ORIGINATOR LICENSE APPLICATION
v.)
16)
HOWARD MARK GERBER,)
17)
Respondent.)

18
19 The Complainant, the Commissioner of Business Oversight (Commissioner), alleges and
20 charges Respondent, Howard Mark Gerber (Gerber), as follows:

21 **I.**

22 **INTRODUCTION**

23 1. The Commissioner licenses and regulates mortgage loan originators, finance lenders, and
24 brokers under the California Financing Law (Fin. Code, § 22000 et seq.) (CFL).¹ The Commissioner
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26
27 ¹ Effective October 4, 2017, the name of the “California Finance Lenders Law” changed to the
28 “California Financing Law.” (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of
this document, a reference to the California Financing Law means the California Finance Lenders
Law before October 4, 2017 and the California Financing Law on and after that date. (Cal. Fin.
Code, § 22000.)

1 also licenses and regulates mortgage loan originators, residential mortgage lenders, and residential
2 mortgage loan servicers under the California Residential Mortgage Lending Act (Fin. Code, § 50000
3 et seq.) (CRMLA).

4 2. To become licensed by the Commissioner as a mortgage loan originator (MLO), an
5 individual must submit a uniform application form (known as the MU2 or MU4 form) through the
6 Nationwide Mortgage Licensing System & Registry (NMLS). The NMLS contains a detailed set of
7 instructions for filing license applications, including a checklist of items to be completed by the
8 applicant, who is fully responsible for all the requirements of the license.

9 3. On July 7, 2017, Gerber applied to the Department of Business Oversight (DBO) for an
10 MLO license by submitting a Form MU4 through the NMLS.

11 4. The Commissioner intends to issue an order denying Gerber’s July 7, 2017 application for a
12 MLO license pursuant to Financial Code sections 22109.1, 22172, 50141, and 50513 because Gerber
13 has: (1) not demonstrated such financial responsibility, character, and general fitness as to command
14 the confidence of the community and to warrant a determination that the mortgage loan originator
15 will operate honestly, fairly, and efficiently within the purposes of those divisions, and (2) withheld
16 information or made a material misstatement in his application for a license.

17 **II.**

18 **THE 1997 REAL ESTATE BROKER LICENSE REVOCATION**

19 5. On March 4, 1997, the California Bureau of Real Estate (“BRE,” formerly the Department of
20 Real Estate or “DRE”) revoked Gerber’s real estate broker license.

21 6. The BRE’s decision found that Gerber had: (1) employed four unlicensed persons to perform
22 acts requiring a real estate license in violation of Business and Professions Code section 10137; (2)
23 committed trust fund violations and collected advanced fees without using approved materials in
24 violation of Business and Professions Code sections 10226, 10145, and 10146, as well as California
25 Code of Regulations, title 10, sections 2832.1, 2970, subdivisions (a) and (b), and 2972; (3) failed to
26 provide borrowers with mortgage loan disclosure statements in violation of Business and Professions
27 Code section 10240 and California Code of Regulations, title 10, section 2840; (4) failed to notify
28 the BRE that certain individuals were no longer employed by Gerber’s company in violation of

1 Business and Professions Code section 10161.8; and, (5) failed to exercise reasonable supervision of
2 the activities of his business which required a real estate license in violation of Business and
3 Professions Code sections 10159.2 and 10177, subdivision (h).

4 7. On June 26, 2003, Gerber petitioned the BRE for reinstatement of his real estate broker
5 license.

6 8. On January 7, 2005, the BRE entered an order denying reinstatement of Gerber’s real estate
7 license, but offered Gerber an opportunity to obtain a restricted real estate license if he took and
8 passed the real estate broker license examination, submitted a real estate broker license application
9 with payment of the fee, and submitted evidence of completing the continuing education
10 requirements of the Real Estate Law for renewal of a real estate license.

11 9. To date, Gerber’s BRE license remains in revoked status, indicating he did not complete
12 these conditions.

13 **III.**

14 **THE 2015 MLO DENIAL**

15 10. On June 20, 2014, Gerber first filed an application with the Commissioner for an MLO
16 license under the CRMLA (the “2015 Application”).

17 11. On the 2015 Application, Gerber was asked Question (K)(5), “Has any state or federal
18 regulatory agency or foreign financial authority or self-regulatory organization (SRO) ever . . .
19 revoked your registration or license?” Gerber answered, “No.”

20 12. The DBO determined pursuant to its own investigation of Gerber’s 2015 Application that his
21 BRE license was revoked on March 4, 1997. Only after being instructed by the Commissioner to
22 amend his response to Question (K)(5) and provide an explanation and supporting documentation
23 did Gerber upload documentation disclosing the 1997 BRE license revocation.

24 13. On April 29, 2015, the Commissioner denied Gerber’s 2015 Application for an MLO license
25 based on: (1) Gerber knowingly making an untrue statement to the Commissioner that no regulatory
26 organization had ever revoked his registration or license when, in fact, the BRE had revoked his real
27 estate license in 1997, in violation of Financial Code section 50512, subdivision (b); and, (2) failing
28 to demonstrate such financial responsibility, character and general fitness as to command the

1 confidence of the community and to warrant a determination that the mortgage loan originator will
2 operate honestly, fairly, and efficiently within the purposes of the CRMLA. Gerber did not timely
3 request a hearing, and the denial order became final.

4 **IV.**

5 **THE 2017 APPLICATION**

6 14. On or around July 7, 2017, Gerber filed a second application with the Commissioner for an
7 MLO license (file number 694065; hereinafter, the “2017 Application”) by submitting a Form MU4
8 through the NMLS pursuant to Financial Code sections 22109.6 and 50140.

9 15. At all relevant times since the filing of the 2017 Application, Gerber has been employed and
10 sponsored by Reverse Mortgage Funding LLC, which is licensed under both the CFL and CRMLA
11 (NMLS No. 1019941).

12 16. On his 2017 Application, Gerber answered “Yes” to Form MU4 Regulatory Action
13 Disclosure Questions K(1), (5), and (6), which specifically ask:

- 14 (K) Has any State or federal regulatory agency or foreign financial regulatory
15 authority or self-regulatory organization (SRO) ever:
16 (1) found you to have made a false statement or omission or been dishonest, unfair or
17 unethical?
18 (5) revoked your registration or license?
19 (6) denied or suspended your registration or license or application for licensure,
20 disciplined you, or otherwise by order, prevented you from associating with a
21 financial services-related business or restricted your activities?

22 17. The 2017 Application required Gerber to explain in detail all “Yes” answers. While Gerber
23 provided a letter of explanation regarding the BRE’s 1997 revocation action, he did not disclose the
24 Commissioner’s previous denial of the 2015 Application.

25 18. The Commissioner finds that Gerber has withheld information or made a material
26 misstatement in an application for a license by failing to disclose the Commissioner’s denial of his
27 2015 Application in his 2017 Application, in violation of Financial Code sections 22172, subdivision
28 (a)(2) and 50513, subdivision (a)(2).

19. Further, the Commissioner finds that Gerber has not demonstrated such financial
responsibility, character, and general fitness as to command the confidence of the community and to

1 warrant a determination that Gerber will operate honestly, fairly, and efficiently within the purposes
2 of the CFL and CRMLA.

3 **V.**

4 **GROUND TO DENY GERBER'S APPLICATION**

5 20. The Commissioner is authorized under the CFL and CRMLA to deny a mortgage loan
6 originator license if an applicant withholds information or makes a material misstatement in an
7 application for a license. (Fin. Code, §§ 22172, subd. (a)(2) and 50513, subd. (a)(2).)

8 21. Both the CFL and CRMLA require the Commissioner to deny a mortgage loan originator
9 license unless the Commissioner finds that the applicant has demonstrated such financial
10 responsibility, character, and general fitness as to command the confidence of the community and to
11 warrant a determination that the mortgage loan originator will operate honestly, fairly, and
12 efficiently within the purposes of the applicable division. (Fin. Code, §§ 22109.1, subd. (a)(3) and
13 50141, subd. (a)(3).)

14 **VI.**

15 **CONCLUSION**

16 Based on the foregoing, the Commissioner asserts that she is justified under Financial Code
17 sections 22172, 50513, 22109.1, and 50141 to deny the issuance of a MLO license to Gerber.

18 WHEREFORE, the Commissioner prays that the application for a mortgage loan originator
19 license filed by Howard Mark Gerber on July 7, 2017 be denied.

20
21 Dated: November 1, 2017
22 Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

23
24 By _____
25 JEREMY F. KOO
26 Counsel
27 Enforcement Division
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