

BEFORE THE  
DEPARTMENT OF BUSINESS OVERSIGHT  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

CHARLES JEFFREY HALIBURTON,

Respondent.

Case No. 1334854

OAH No. 2017061128

**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 March 15, 2018.

IT IS SO ORDERED this 13<sup>th</sup> day of February 2018

By: 

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**PROPOSED DECISION**

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 22, 2017, in Los Angeles, California.

Blaine A. Noblett, Senior Counsel, and Jeremy F. Koo, Counsel, represented complainant Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), Department of Business Oversight (Department).

Charles Jeffrey Haliburton (respondent) appeared and represented himself.

At the administrative hearing, the parties stipulated to a protective order to seal exhibit G, which is respondent's credit report. Because the document contains confidential, private information which cannot be protected by mere redaction, entry of a protective order is appropriate. Therefore, good cause appearing, the ALJ ordered that, following the use of the exhibit in preparation of the Proposed Decision, exhibit G shall be placed under seal and protected from disclosure to the public. The exhibit shall remain under seal and shall not be opened. This order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may review the documents subject to this order provided that such documents are protected from release to the public.

The record was closed and the matter submitted for decision on November 22, 2017.

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## FACTUAL FINDINGS

### *Parties and Jurisdiction*

1. On February 16, 2016, respondent electronically filed an individual MU4 License Form (Form MU4) with the Department through the Nationwide Multistate Licensing System (NMLS) for licensure as a mortgage loan originator. The Department denied respondent's license application.

2. Complainant filed the Statement of Issues in his official capacity. Complainant alleges that respondent's license application should be denied on the grounds that he failed to disclose a 1984 felony conviction for bank robbery on his Form MU4. Respondent timely filed a Notice of Defense and a Request for hearing. This hearing ensued.

### *California Finance Lenders Law*

3. Enacted in 2008, the federal Secure and Fair Enforcement Mortgage License Act (SAFE Act), created the NMLS as the depository for all lender information to uniformly regulate mortgage loan originators in every state. Prior to the enactment of the SAFE Act, there was no requirement for an individual in California to be licensed as a mortgage loan originator by the Commissioner. After 2008, however, California's State Legislature amended the California Finance Lenders Law, which is found at Financial Code section 22000 *et seq.*, to incorporate the specific requirements of the SAFE Act for the licensing of mortgage loan originators. Under Financial Code section 22100, every licensee engaged in the business of making or brokering residential mortgage loans must require that every mortgage loan originator who is employed or compensated by that licensee hold a mortgage loan originator license or have a license endorsement from the Commissioner of Real Estate.

4. An applicant for a mortgage loan originator license must submit an application on Form MU4, as prescribed by the NMLS. The Commissioner may require the applicant to submit additional information and documentation. An applicant must, at a minimum, furnish the NMLS with information concerning his or her identity including (1) fingerprint images and related information to permit a criminal history background check and (2) an authorization to permit the NMLS and the Commissioner to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction. (Fin. Code, § 22105.1.)

5. The Commissioner must deny an application for a mortgage loan originator license unless the Commissioner makes certain findings, including a finding that "the applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently. . . ." (Fin. Code, § 22109.1, subd. (a)(3).)

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*Respondent's Failure to Disclose His Criminal Conviction*

6. A. On September 27, 1984, respondent was convicted on his guilty plea to violating title 18 of the United States Code, section 2113 (a), bank robbery, a felony, with enhancement under section 2113 (d), assault with a dangerous weapon.<sup>1</sup> (United States District Court, Northern District of Illinois, case number CR-84-00435-01.)

B. For his conviction, respondent was sentenced to three years of imprisonment. The court also recommended that respondent receive psychiatric counseling and that he takes his prescribed dosage of lithium carbonate during the period incarceration. On January 28, 1985, the court reduced respondent's sentence to 24 months of imprisonment. Respondent served 18 months in prison before he became eligible for parole. He has completed all of the terms of his sentence. However, there was no evidence that respondent's conviction has been expunged or pardoned.

C. The facts and circumstances surrounding respondent's conviction for bank robbery are that respondent used a semi-automatic pistol to rob a federally insured banking institution.

7. On February 16, 2016, respondent filed an application for a mortgage loan originator license with the Department. Respondent submitted his application, pursuant to his employment with Loanleaders of America Inc. (Loanleaders), by completing an online Form MU4 through the NMLS.

8. Under the section for Criminal Disclosures, Form MU4 included the following question:

Question (F) (1): Have you ever been convicted of or pled nolo contendere ("no contest") in a domestic, foreign, or military court to any felony?

(Ex. 5A, p. 35)

9. On February 16, 2016, respondent answered "no" to question (F)(1). Respondent signed the Form MU4 electronically, attesting that the answers provided in the Form MU4 were true, accurate and complete under penalty of perjury. Respondent's answer to question (F)(1) was false.

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<sup>1</sup> Respondent's bank robbery conviction, in and of itself, is not alleged as a basis for denial of his license. The sole basis for denial of licensure in this case is respondent's failure to disclose his conviction on his Form MU4. However, the existence of the conviction must be proven as a necessary element to the charge that respondent misrepresented material facts by omitting his conviction from his license application.

10. On March 8, 2016, Deborah Wong, the Corporation Examiner with the Department, reviewed respondent's application and conducted a criminal background check which revealed respondent's 1984 bank robbery conviction. She contacted respondent through the NMLS website and instructed him to provide additional supporting documentation and a detailed explanation of the circumstances surrounding his conviction.

11. On June 7, 2016, respondent submitted another Form MU4 in which he amended his answer to question (F)(1) from "no" to "yes." He also uploaded the court docket related to his conviction and provided the following explanation:

Please allow me to preface my explanation by saying that my MU4 was being handled by our [Loanleader's] Compliance Officer, Mr. John Park. He recently took a position with another company. Before he left, he had advised me that he had to put my application on hold while he took care of numerous audits that had come due. . . 31 years ago, I received my only conviction in my lifetime. I had a medical problem that resulted in me committing a bank robbery. The medical problem was discovered by doctors after I was arrested. I was examined by Dr. Jonathan Kelly (see page 4 of the court docket). He concluded that I had suffered from depression and that this caused me to commit my crime.. . In regards to answering this question [question (F)(1)] as "No," that was an error. I had received assistance in completing my application and understood the background questions to be covering 10 year period. I do apologize for the error. . . .

(Ex. 5B, p. 52.)

#### *Respondent's Testimony*

12. At the administrative hearing, respondent reiterated that his conviction occurred 33 years ago and that his depression, which was purportedly diagnosed by Dr. Johnathan Kelly after his arrest, had led him to commit bank robbery. Regarding his failure to disclose his criminal convictions on his license Form MU4, respondent blamed John Park, Loanleader's Compliance Officer, for advising him that he is only required to disclose criminal convictions over a 10 year period. Respondent claimed that he did not review Form MU4 carefully and that he answered "no" to question (F)(1) based on Mr. Park's erroneous advice. Respondent emphasized several times during his testimony that this case was about, in his words, "a box checked wrong," which should not overshadow his accomplishments during the past 33 years.

13. Respondent did not present as a credible witness. The assertions he made at hearing were inconsistent with the documentary evidence. Respondent claimed, without citing to any evidence, that his crime was caused by a medical condition. While the court docket in respondent's criminal case shows that he was ordered to undergo a psychiatric

evaluation with Dr. Kelly, there is no indication of any medical diagnosis, nor was there any finding by Dr. Kelly that respondent's depression or any other medical condition had led him to commit bank robbery and assault with a dangerous weapon.

14. Respondent's testimony that he relied on the erroneous advice of Loanleader's compliance officer in completing his criminal disclosures on the Form MU4 is uncorroborated and unpersuasive. To begin with, Mr. Park did not appear at the hearing to substantiate respondent's claims. Furthermore, the language of question (F)(1) is unambiguous. It asks whether respondent had *ever* been convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court to any felony. There is no time limitation to this question. Given that he had attested, under penalty of perjury, that his responses on the MU4 are true, accurate, and complete, respondent cannot shift his personal responsibility to review his application carefully and answer each question of the Form MU4 truthfully to Mr. Park. Thus, respondent's failure to disclose his conviction on his Form MU4 was willful and constituted false statements of material fact.

#### *Mitigation and Rehabilitation*

15. Respondent is 62 years old. He is a graduate of Loop Junior College and De Paul University. He has been continuously employed since 1992, taking on various positions as the assistant sales manager for an automobile dealership and as a subrogation specialist for several major insurance companies. Respondent's work experience in the mortgage industry began in 2002, when he was employed as a senior loan officer with Country Wide Home Loans. From 2008 to 2015, he worked at American Capital Funding, OGI Mortgage Bankers, and North Street Lending, assisting both residential and commercial borrowers with loans. From 2015 until the present, respondent has been a junior mortgage banker at Loanleaders. During this long history of gainful employment, respondent received several awards from his employers for his job performance.

16. In a letter dated November 16, 2017, Martin Foigleman, CPA and President of Loanleaders, wrote:

[Respondent] fulfilled his employment duties with little supervision and interacts well with the staff due to his strong communication and interpersonal skills. His work ethic is outstanding as month after month [respondent] contributes his best work efforts towards the growth of our company.

[¶]. . . . [¶]

I am confident that [respondent's] skills and abilities, as well as his moral integrity, will continue to be a valuable asset to our organization and the community. . . .

(Ex. I.)

17. Respondent was licensed as a residential mortgage loan originator by the State of Louisiana in 2004. He was licensed as a mortgage solicitor in the State of New Jersey from 2005 to 2007. He was licensed as a loan officer by the State of North Carolina from 2004 to 2005. However, since the enactment of the SAFE Act in 2008, respondent has not been licensed by any state as a mortgage loan originator.

18. There was no evidence that respondent has sustained any other criminal convictions. But for his failure to disclose his 1984 felony for bank robbery, respondent has otherwise fulfilled all other requirements to be licensed as a mortgage loan originator.

19. As a contributing member of his community, respondent worked for several years in prison ministry. He was also a member of the Los Angeles Police Department Clergy Council, as well as the president of three church auxiliaries at his church.

### LEGAL CONCLUSIONS

1. The respondent generally bears the burden of proof at an administrative hearing regarding a statement of issues. (*Coffin v. Department of Alcoholic Beverage Control* (200)) 139 Cal.App.4th 471, 476.) The standard of proof is a preponderance of the evidence. (Evid. Code, § 115; *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 322–323.) “Preponderance of the evidence means evidence that has more convincing force than that opposed to it.” (citations omitted) . . . . The sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324–325.) (Emphasis in original.)

2. Financial Code section 22109.1 provides, in relevant 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.

3. Based on Factual Findings 6 through 14 and Legal Conclusion 1 and 2, cause exists to deny respondent’s application for a mortgage lender originator’s license, pursuant to Financial Code section 22109.1.

4. Respondent is to be commended for having turned his life around since his 1984 conviction for bank robbery. He has not suffered any other criminal convictions. He has been gainfully employed over the last 15 years and made considerable achievements in his career. Respondent has also volunteered in his community by performing ministry work and being actively involved in his church.

5. Nevertheless, Financial Code section 22109.1, subdivision (a)(3), requires an applicant for a mortgage loan originator license to demonstrate such character and general fitness as to command the confidence of the community or to warrant that that he or she will operate "honestly." The appellate court has found that "[w]here the occupation is one wherein those following it act as agents and representatives of others and in a more or less confidential and fiduciary capacity, it certainly can be fairly said that those pursuing it should have in a particular degree the qualifications of 'honesty, truthfulness and good reputation.'" (*Riley v. Chambers* (1919) 181 Cal. 589, 594.) The occupation of a mortgage loan originator fits this description, in that a mortgage loan originator holds a position of trust and has access to highly confidential personal information and financial data. Furthermore, the word "honesty," as used in a statute similar to Financial Code section 22109.1, subdivision (a)(3), has been held to have the broadest possible meaning. (*Rhoades v. Savage* (1963) 219 Cal.App.2d 294, 299.) "It has been defined to as a 'fastidious' allegiance to the standards of one's profession, call or position; fairness and straightforwardness of conduct, speech, integrity; truthfulness; freedom from fraud." (*Ibid.*, quoting from Webster's New International Dictionary, Second Edition.)

6. In the instant case, as set forth in Factual Finding 14, respondent's denial under oath on his initial Form MU4 that he had suffered a felony conviction constituted a willfully false and dishonest statement. Moreover, respondent did not display candor in his testimony in court and in his explanation to the Department regarding the facts and circumstances surrounding his conviction and his failure to disclose the conviction on his initial Form MU4. These dishonest statements are recent, even if respondent's conviction occurred more than 30 years ago. It is particularly concerning that respondent considered the issue at the heart of this case to be about "a box checked wrong." Respondent's minimization of his misconduct suggests that he does not yet fully accept personal responsibility for his actions. Therefore, the Commissioner is precluded from finding that respondent has demonstrated such character and general fitness as to command the confidence of the community or to warrant that he will operate honestly within the purposes of the California Finance Lender Law.

7. Even assuming the truth of respondent's explanation that his failure to disclose his felony conviction was a result of not having read the question carefully and having relied on faulty advice, respondent's conduct in completing his initial Form MU4 further evidences his unfitness to operate effectively as a mortgage loan originator. A mortgage loan originator must be detail-oriented, in that each piece of information on a loan application may have a significant impact on the viability of the loan. Negligence and ignorance are simply unacceptable characters in representatives of service-related industries. (*Handeland v.*

*Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Corporations Commissioner v. Maspero* (2003) OAH Case L2002090534, p.8.<sup>2</sup>)

8. For the foregoing reasons, public protection requires the denial of respondent's application for a mortgage loan originator license.

### ORDER

Respondent Charles Jeffrey Haliburton's application for a mortgage loan originator license is denied.

DATED: December 13, 2017

DocuSigned by:

CS7B80BFCCC14EC

JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings

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<sup>2</sup> Designated as a precedential decision by the Department pursuant to Government Code section 11425.60.