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

10
11 In the Matter of:) NMLS ID: 323371
)
12 THE COMMISSIONER OF BUSINESS) STATEMENT OF ISSUES IN SUPPORT OF
13 OVERSIGHT,) ORDER DENYING APPLICATION FOR
) MORTGAGE LOAN ORIGINATOR
14 Complainant,) LICENSE
)
15 v.)
)
16 WILLIAM RICHARD HOGARTY,)
17)
18 Respondent.)

19 I.

20 INTRODUCTION

21 The Commissioner of Business Oversight (Commissioner) seeks to deny the issuance of a
22 mortgage loan originator (MLO) license to Respondent William Richard Hogarty (Hogarty)
23 pursuant to section 22109 of the California Finance Lender Law (CFLL) (Fin. Code, § 22000 et
24 seq.) Hogarty has made false and/or misleading statements in his MLO license application to the
25 Commissioner, thereby failing to demonstrate such financial responsibility, character, and general
26 fitness as to command the confidence of the community and to warrant a determination that he will
27 operate honestly, fairly, and efficiently as a MLO.

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II.

STATEMENT OF FACTS

1. On or about September 10, 2016, Hogarty filed an application for a MLO license with the Commissioner by submitting a Form MU4 through the Nationwide Mortgage System and Registry (NMLS) pursuant to section 1422.6 of Title 10 of the California Code of Regulations (Application).

2. Hogarty answered “Yes” to questions on the Application regarding his history, including: (1) a prior personal bankruptcy (Question (A)(1)); (2) a criminal conviction and/or nolo contendere plea to a misdemeanor (Question (H)(A)); and, (3) having been named as a defendant in a financial services related consumer-initiated arbitration or civil litigation (Question (P(3))). The Application required Hogarty to explain in detail all “Yes” answers.

3. Hogarty’s explanation in the Application asserted he filed for bankruptcy “because I have a boat that went down in value, yet decided to not go through with the bankruptcy and it was dismissed.” Applicable disclosure documents were not submitted with regard to this explanation.

4. Hogarty’s explanation in the Application disclosed he was named as a defendant in a civil lawsuit as the owner of Olympia Funding Lending Group, Inc. (OLG). The plaintiff demanded a refund of monies paid for a mortgage modification; this case was settled for \$65,000.00. Applicable disclosure documents were not submitted with regard to this explanation either.

5. In Hogarty’s explanation in the Application concerning his criminal conviction, he again failed to upload necessary documentation and stated:

[P]lead [sic] guilty to one misdemeanor count of section 2944.6 requires certain specific written disclosures to borrowers prior to mortgage loan modifications on 8/2014. I was trying to help borrowers refinance their homes with a negotiated short payoff as they had negative equity. Bank of America and Chase decided not to help their clients and in turn the customers with these loans were dissatisfied with results. I was able to help over 100 borrowers with different lenders successfully lowered [sic] their mortgage balance. This occurred in 2009 and I stopped doing negotiation’s [sic] at that point and exited the mortgage business for 7 years.

1 6. On or about October 11, 2016, because Hogarty answered “Yes” regarding the
2 existence of civil litigation, Hogarty was asked for the disclosure of court documents for the
3 Customer Arbitration/Civil Litigation question. The Commissioner’s review of Hogarty’s public
4 license record with the California Bureau of Real Estate (BRE) revealed enforcement actions had
5 been taken against Hogarty’s BRE broker license (License No. 01108686) because Hogarty failed
6 to maintain adequate supervision and prevent violations incurred by his company, O.F. Lending
7 Group (License No. 01855443). The corporate broker license for OLG was also disciplined by the
8 BRE for violations of the Business and Professions Code and the California Code of Regulations.
9 In connection with BRE Enforcement Action No. H-11008SF, Hogarty and OLG voluntarily
10 surrendered their licenses to avoid the licenses being suspended and/or revoked.

11 7. Hogarty did not disclose the actions filed by the BRE in his Application and
12 answered “No” to questions related to Regulatory Action Disclosure (Questions (K)(2), (K)(4),
13 (K)(8) and (M)). On October 18, 2016, the Commissioner requested that Hogarty amend the
14 disclosure questions regarding, among other things, the BRE Enforcement Action.

15 8. On October 19, 2016, Hogarty filed two amendments in the NMLS (Filing Nos.
16 9808824 and 9840943) and uploaded a Request for Dismissal related to the Customer
17 Arbitration/Civil Litigation question.

18 9. Also on October 19, 2016, Hogarty supplemented the explanation section of
19 Question (H)(1) to indicate he had pleaded guilty to a misdemeanor violation of Civil Code section
20 2944.6, a financial-related crime, for failure to provide disclosure documents to borrowers.
21 Hogarty did not provide relevant court documents regarding this question.

22 10. On October 25, 2016, Hogarty’s Application was updated to identify his sponsor as
23 Dyjero Corporation (NMLS ID. 976231), 4843 Voltaire Street, Suite A, San Diego, California
24 92107.

25 11. On October 27, 2016, the Commissioner requested that Hogarty upload documents
26 concerning the Criminal Disclosure question.

27 12. On October 28, 2016, Hogarty uploaded another amendment in the NMLS (Filing
28 No. 9869653) to respond to the Customer Arbitration/Civil Litigation question by filing a Request

1 for Dismissal, a Settlement Agreement and Release, a Stipulation for Judgment and a Judgment by
2 Stipulation. The Settlement Agreement revealed a group of consumers had sued Hogarty and OLG
3 for advance fees that were never refunded to them in connection with refinancing; Hogarty and
4 OLG were ordered to pay \$65,000 as settlement of those claims.

5 13. On or around November 9, 2016, the Commissioner requested that Hogarty submit
6 proof of the payment of restitution as ordered as settlement of the civil case in response to Question
7 (P)(3).

8 14. On November 12, 2016, Hogarty asserted that the Commissioner’s request that he
9 amend his Regulatory Action Disclosure questions (Questions (K)(2), (K)(4), (K)(8) and (M)) did
10 not apply to him because he contended that the BRE did not find violation of any laws.

11 15. On November 14, 2016, Hogarty was advised by the Commissioner that the Order to
12 Desist and Refrain issued by the BRE on October 27, 2010 had found Hogarty and OLG to have
13 violated the Business and Professions Code and the California Code of Regulations with regard to
14 collecting advance fees. Hogarty was instructed to amend all relevant disclosure questions to
15 address enforcement actions by the BRE.

16 16. On November 16, 2016, Hogarty filed two amendments on NMLS (Filing Nos.
17 10033448 and 10070465), which responded to Criminal Disclosure Question (H)(1), and uploaded
18 a two-page terms and conditions for sentence form. Hogarty also amended as “Yes” his responses
19 to the Regulatory Action Disclosure questions (Questions (K)(2), (K)(4), (K)(8) and (M)) and
20 uploaded some BRE-related documents. Hogarty did not upload the Order Accepting Voluntary
21 Surrender of Real Estate License that was issued by the BRE on February 11, 2011.

22 17. On November 17, 2016, Hogarty filed an amendment (Filing No. 10084924) to
23 Criminal Disclosure Question (H)(1) and uploaded a two-page sheet of terms and conditions for
24 sentence and a walk warrant which detailed that Hogarty, along with other employees of OLG,
25 committed a pattern of felony crimes involving financial fraud, embezzlement, fraud and breach of
26 fiduciary obligation in violation of Penal Code sections 186.11(a), 801.5 and 803(c), between
27 March 2009 and September 2, 2010.

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1 24. The Second Cause of Action in the Accusation filed by the BRE also alleged that
2 OLG accepted or received funds in trust for or on behalf of lenders or investors in connection with
3 the servicing, solicitation, negotiation, processing and consummation of mortgage loan investments.
4 In connection with the receipt and disbursement of trust funds, the BRE alleged that OLG: (1)
5 failed to deposit the trust funds into trust accounts in the name of OLG as trustee at a bank or other
6 financial institution as required by Business and Professions Code section 10145 and California
7 Code of Regulations, title 10, section 2832; (2) failed to maintain written control records of all trust
8 funds received and disbursed as required by California Code of Regulations, title 10, section 2831;
9 (3) failed to maintain separate beneficiary or transaction records as required by California Code of
10 Regulations, title 10, section 2831.1; (4) failed to reconcile the balance of separate beneficiary or
11 transaction records with the control record of trust funds as required by California Code of
12 Regulations, title 10, section 2831.2; and (5) caused or permitted a person that was not licensed by
13 the BRE and not covered by a fidelity bond to withdraw trust funds from the trust accounts in
14 violation of California Code of Regulations, title 10, section 2834.

15 25. Further, the Second Cause of Action of the Accusation alleged that OLG failed to
16 maintain the real estate sales person certificates for 12 of its employees as required by Business and
17 Professions Code section 10160 and California Code of Regulations, title 10, section 2753. The
18 BRE further asserted in the Second Cause of Action that OLG violated Business and Professions
19 Code section 10240 by: (1) failing to provide the written Mortgage Loan Disclosure Statement to
20 the borrower as required by Business and Professions Code section 10241; (2) failing to obtain the
21 borrower's signatures on the written Mortgage Loan Disclosure Statement; and (3) failing to retain
22 the written Mortgage Loan Disclosure Statements signed by the borrowers for a period of three
23 years.

24 26. The Third Cause of Action of the Accusation filed by the BRE alleged that Hogarty,
25 as CEO and broker officer of OLG, failed to exercise reasonable supervision and control over the
26 actions and license activities of OLG.

27 27. On October 27, 2010, the BRE ordered Hogarty and OLG to desist and refrain from
28 charging, demanding, claiming, collecting and/or receiving advance fees as defined under Business

1 and Professions Code section 10026.

2 28. On February 11, 2011, the BRE issued an Order to Accept the Voluntary Surrender
3 of Hogarty’s real estate license as well as the real estate license of OLG. The licenses were
4 surrendered to avoid the licenses being suspended or revoked.

5 **IV.**

6 **CIVIL LAWSUIT FOR IMPROPER COLLECTION OF ADVANCE FEES**

7 29. Pursuant to the Civil Lawsuit disclosures made by Hogarty on his Application, a
8 group of 22 former clients sued Hogarty, OLG, and OLG’s associates for advance fees that were
9 not paid back in connection with short pay refinance. The case settled for an agreement of Hogarty
10 and OLG to pay the plaintiffs the sum of \$65,000, which remains unpaid.

11 **V.**

12 **CRIMINAL ACTION**

13 30. Hogarty also pleaded nolo contendere to a violation of Business and Professions
14 Code section 2944.6 (collecting upfront fees) in Alameda County. According to the materials
15 submitted with the Application, on November 15, 2014, Hogarty was ordered to serve two days in
16 jail but received credit for time served. Hogarty was also to pay restitution as well as a fine of
17 \$240.00 with regard to the nolo contendere plea.

18 **VI.**

19 **APPLICABLE LAW**

20 31. Financial Code section 22109.1 provides in relevant part:

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

23 . . .

24 (3) The applicant has demonstrated such financial responsibility,
25 character, and general fitness as to command the confidence of the
26 community and to warrant a determination that the mortgage loan
27 originator will operate honestly, fairly, and efficiently within the
28 purposes of this division.

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1 32. The Commissioner finds that Hogarty does not meet at least one of the minimum
2 requirements for issuance of a MLO license as set forth in Financial Code section 22109. Hogarty
3 has a financial history that includes a bankruptcy, a record of improper conduct while holding his
4 real estate license which resulted in the surrender of the license, civil claims arising out of his
5 business with his real estate license, and a nolo contendere plea to a violation of Business and
6 Professions Code section 2944.6 (improper collection of upfront fees).

7 32. The Commissioner further finds that Hogarty was not forthcoming in completing the
8 application for a MLO license by withholding material information and making misleading
9 statements in response to requests for information in connection with the Application. Pursuant to
10 Financial Code section 22109, the Commissioner may deny an application for a MLO license if
11 there has been a material misstatement in the application or if the applicant withholds information
12 in the application.

13 33. The Commissioner finds that Hogarty fails to meet the minimum standards for
14 issuance of a MLO license under Financial Code section 22109.1, subdivision (a)(3), in that
15 Hogarty has not “demonstrated such financial responsibility, character, and general fitness as to
16 command the confidence of the community and to warrant a determination that the mortgage loan
17 originator will operate honestly, fairly, and efficiently within the purposes of this division.”

18 WHEREFORE, The Commissioner gives notice of her intention to deny the MLO license
19 application filed by William Richard Hogarty.

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21 Dated: April 7, 2017
22 San Francisco, CA

JAN LYNN OWEN
Commissioner of Business Oversight

23
24
25 By _____
26 WILLIAM F. HORSEY, JR.
27 Senior Counsel
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