

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

MARY ANN SMITH
Deputy Commissioner
DOUGLAS M. GOODING
Assistant Chief Counsel
MARISA I. URTEAGA-WATKINS (SBN 236398)
Corporations Counsel
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 445-9626
Fax: (916) 445-6985

Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of THE COMMISSIONER OF) NMLS No.: 320124
BUSINESS OVERSIGHT OF THE STATE OF)
CALIFORNIA,)
) **STATEMENT OF ISSUES IN SUPPORT OF**
 Complainant,) **DENIAL OF MORTGAGE LOAN**
) **ORIGINATOR LICENSE APPLICATION**
 vs.)
)
 IAN FREDERICK MITCHELL,)
)
 Respondent.)
_____)

The Commissioner of Business Oversight (“Commissioner” or “Complainant”) is informed and believes, and based upon such information and belief, alleges and charges Respondent Ian Frederick Mitchell (“Respondent” or “Mitchell”) as follows:

///
///

1 ///

2

3

**I.
INTRODUCTION**

4

5

6

7

8

9

10

On or about March 24, 2014, Complainant informally determined not to issue a mortgage loan originator license to Ian Frederick Mitchell (“Respondent” or “Mitchell”) pursuant to Financial Code section 50141 because Respondent has not demonstrated financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, and efficiently within the purposes of the Mortgage Loan Originator Law of California.

11

12

**II.
THE APPLICATION**

13

14

15

16

17

18

19

20

21

On August 26, 2010, Ian Frederick Mitchell (“Respondent” or “Mitchell”), filed an application for a mortgage loan originator license with the Commissioner pursuant to the California Residential Mortgage Lending Act (“CRMLA”)(Financial Code sections 50000 *et. seq.*), in particular, Financial Code section 50140. The application was for employment with or working on behalf of Angel Oak Funding, L.L.C. as a mortgage loan originator, Nationwide Mortgage Licensing System (“NMLS”) ID 685842 as a mortgage loan originator. The application was submitted to the Commissioner by filing a Form MU4 application through NMLS. Respondent signed the Form MU4 swearing that the answers were true and complete to the best of Respondent’s knowledge.

22

23

24

25

26

27

28

The Form MU4 at Section K(5), “Regulatory Action” specifically asked: *“Has any state or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever: (5) revoked your registration or license?”* Respondent answered “Yes.” Respondent disclosed that Respondent was previously licensed by the California Bureau of Real Estate (“BRE”) as a real estate salesperson (“BRE License”) from February 20, 2002 to September 20, 2012. During the time Respondent held the BRE License, Respondent was the subject of a Desist and

1 Refrain Order (“D&R”) (Exhibit 1) issued by the BRE on or about December 7, 2011, for violations
2 of Business and Professions Code section 10086. Specifically, while Respondent held the BRE
3 License, Respondent performed acts which require a real estate broker license which Respondent
4 did not have. This D&R was issued in connection with Respondent’s business activities while
5 licensed as a real estate salesperson (however, not a broker) holding a BRE License. Respondent
6 disclosed the D&R in the Application to the Department.

7 The Form MU4 at Section K(9), “Regulatory Action” specifically asked: *“Has any state or*
8 *federal regulatory agency or foreign financial regulatory authority or self-regulatory organization*
9 *(SRO) ever: (9) entered an order concerning you in connection with any license or registration?”*

10 Respondent answered “No.” Contrary to Respondent’s answer, the Respondent disclosed to the
11 Department that the BRE eventually revoked the BRE License on or about September 20, 2012,
12 pursuant to Business and Professions Code section 10177. The BRE License was revoked
13 subsequent to: (1) The BRE issuing an Accusation setting forth allegations against Respondent on
14 or about October 17, 2011, (“Accusation”) (Exhibit 2); (2) Respondent being granted an
15 opportunity to be heard at an administrative hearing on the merits; (3) a Stipulation and Agreement
16 mutually negotiated and validly entered into by Respondent and the BRE while Respondent was
17 duly represented by legal counsel, dated September 20, 2012 (“Agreement”); and (4) an order
18 issued by the BRE pursuant to and within the Agreement, dated September 20, 2012 (“Order”)
19 (Exhibit 3).

20 Pursuant to the Accusation, Agreement and Order, the BRE License was revoked because
21 Mitchell was found to have engaged in activity in violation of Business and Professions Code
22 section 10130. Mitchell, despite only being licensed as a real estate salesperson, operated a
23 mortgage and loan brokerage business with another person. On or about August 26, 2009, a
24 California resident sought the services of Mitchell and his associate. Mitchell and his associate
25 demanded that this resident sign an “Irrevocable Fee Agreement” regarding the sale of real property
26 in which the resident agreed to pay 3.0% of the loan amount of the proceeds of a \$875,000.00 loan
27 at the close of escrow, with 1.5% of the loan amount to Mitchell and 1.5% of the

1 loan amount to his associate. Mitchell and his associate were paid \$13,500.00 each as payoff
2 charges despite not being licensed as a broker. Mitchell also did not provide certain disclosures to
3 the resident. Respondent violated section 10130 of Business and Professions Code by performing
4 activities requiring a broker license without being licensed, and/or assuming to act as a real estate
5 broker. The BRE revoked Mitchell's BRE License based upon these actions.

6 The Form MU4 at Sections A and D, "Financial Disclosure" specifically asked: "(1) Have
7 you filed a personal bankruptcy petition or been the subject of an involuntary bankruptcy petition
8 within the past 10 years? (2) Based upon events that occurred while you exercised control over an
9 organization, has any organization filed a bankruptcy petition or been the subject of an involuntary
10 bankruptcy petition within the past 10 years? (3) Have you been the subject of a foreclosure action
11 within the past 10 years? And (D) Do you have any unsatisfied judgments or liens against you?"
12 Respondent answered "Yes" to each of these. Respondent disclosed that Respondent filed for
13 federal bankruptcy in or about October 2009 which was discharged in or about July 2012. Also,
14 Respondent disclosed that based upon events that occurred while Respondent exercised control over
15 an organization, the organization filed for bankruptcy in the past 10 years. Respondent stated:
16 "CH7 BK Serious Music Records. Final. Corporation BK in 2005. No personal BK." Moreover,
17 Respondent disclosed that he was the subject of a foreclosure action within the past 10 years.
18 Respondent stated: "623-625 W 8th San Pedro Condominiums. 2nd Trust deed foreclosure of
19 condominium project 08/2010 – Bay Area Financial (lender). Project was started in late 2007.
20 Lender still owns property." Finally, Respondent disclosed that unsatisfied judgments or liens
21 against Respondent are currently in existence. The tax lien was filed in December 2012 as a result
22 of a tax audit. Respondent stated:

23 *Tax lien resulted from a 5 year tax audit. The only finding which caused the lien was that*
24 *real estate losses could not be realized as expenses for the tax years in question. I was*
25 *considered a full time real estate professional, but was excluded from active management*
of real estate because I worked in the mortgage industry.

26 On or about March 24, 2014, the California Department of Business Oversight
27 ("Department") notified Respondent in writing of its intent to deny Respondent's application. The
28

1 Department also provided the Respondent with an opportunity to withdraw his application prior to
2 issuing a formal administrative action denying Respondent’s application. In response to the
3 Department’s March 24, 2014 correspondence, and despite there being no administrative action
4 filed in the matter denying Respondent’s application, Respondent Mitchell issued a written “request
5 for reconsideration” or “notice of appeal” on or about April 23, 2014, which was ineffective.
6 Therefore, the Department now issues this formal administrative action denying the Respondent’s
7 application consisting of this instant Statement of Issues, Notice, and accompanying documents.

8 **III.**

9 **APPLICABLE LAW**

10 Financial Code section 50141 provides in pertinent part:

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

14 (3) The applicant has demonstrated such financial responsibility,
15 character, and general fitness as to command the confidence of
16 the community and to warrant a determination that the mortgage
17 loan originator will operate honestly, fairly, and efficiently
18 within the purposes of this division.

19 **IV.**

20 **CONCLUSION**

21 Complainant finds, by reason of the foregoing, that Respondent has failed to demonstrate
22 such financial responsibility, character, and general fitness as to command the confidence of the
23 community and warrant a determination that he will operate honestly, fairly, and efficiently as a
24 mortgage loan originator in light of his actions under the meaning of Financial Code section 50141.
25 Complainant finds that each and every above stated act by Respondent Ian Frederick Mitchell is
26 sufficient grounds to deny a California mortgage loan originator license to Respondent Ian
27 Frederick Mitchell, pursuant to Financial Code section 50141.

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

THEREFORE, Complainant asserts that Financial Code section 50141 mandates that the Commissioner deny Respondent’s application for a mortgage loan originator license. WHEREFORE IT IS PRAYED that the determination of the Commissioner to deny Respondent’s application for a mortgage loan originator license be upheld.

Dated: December 9, 2014

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
MARISA I. URTEAGA-WATKINS
Corporations Counsel