

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

JAMES ALEXANDER SEIBERT,

Respondent.

NMLS No. 220944

OAH No. 2017051384

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated November 15, 2017, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on March 30, 2018.
IT IS SO ORDERED this 28th day of February, 2018.



JAN LYNN OWEN
Commissioner of Business Oversight

ERRATA SHEET

Changes to Proposed Decision – James Alexander Seibert

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- 1) On page 1 of the Proposed Decision, Paragraph Number 1 of the Factual Findings, line 6, delete “or” and insert instead “as“.
- 2) On page 2 of the Proposed Decision, Paragraph Number 1 of the Factual Findings, line 2, delete “misrepresentation“ and insert instead “misstatement“.
- 3) On page 2 of the Proposed Decision, Paragraph Number 1 of the Factual Findings, line 3, after “for” insert “a”.
- 4) On page 2 of the Proposed Decision, Paragraph Number 3 of the Factual Findings, line 3, after “of” insert “Notice of”.
- 5) On page 3 of the Proposed Decision, Footnote Number 2 of the Factual Findings, line 5, delete “Lasey” and insert instead “Lascy“.
- 6) On page 5 of the Proposed Decision, Paragraph Number 12 of the Factual Findings, line 15, add a comma between “Form” and “prepared”.
- 7) On page 6 of the Proposed Decision, Paragraph Number 17 of the Factual Findings, line 6, delete “Lasey” and insert instead “Lascy”.
- 8) On page 7 of the Proposed Decision, Paragraph Number 19 of the Factual Findings, line 11, after “for” insert “a”.
- 9) On page 9 of the Proposed Decision, Paragraph Number 3 of the Legal Conclusions, line 3, after “at” insert “a”.

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PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, State of California, on August 30, 2017, in Sacramento, California.

Timothy L. Le Bas, Senior Counsel, represented complainant Jan Lynn Owen, Commissioner of Business Oversight, Department of Business Oversight, State of California.

Peter F. Samuel, Attorney at Law, represented James Alexander Seibert.

Evidence was received, the hearing concluded, and the record remained open to allow the parties to submit closing briefs. Complainant and respondent filed closing briefs on October 6, 2017, that were marked respectively as Exhibits 53 and B for identification. On October 20, 2017, complainant and respondent filed reply briefs that were marked respectively as Exhibits 54 and C for identification. The record was closed, and the matter was submitted for decision on October 20, 2017.

FACTUAL FINDINGS

Background

1. Jan Lynn Owen (complainant) is the Commissioner of Business Oversight, Department of Business Oversight (Department). The Commissioner is authorized to revoke a mortgage loan originator licensee if the licensee fails at any time to meet the requirement of Financial Code section 50141. Specifically, a mortgage loan originator license may be revoked where the Commissioner cannot find that a licensee “has demonstrated such financial responsibility, character, and general fitness or 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 purpose of this division.” In addition, Financial

Code section 50513 allows the Commissioner to revoke a mortgage loan originator license if an applicant “withholds information or makes a material misrepresentation in an application for license or license renewal.”

2. James Alexander Seibert (respondent) holds a mortgage loan originator license. He was employed as a mortgage loan originator by Finance of America Mortgage, doing business as Alpine Mortgage Planning (AMP), with an address of 3010 Lava Ridge Court, Roseville, California 95661. A mortgage loan originator is an individual who, for compensation or gain, takes a residential loan application, or offers to negotiate terms of a residential mortgage loan. (Fin. Code, § 50003.5.) Every loan made or brokered by a residential mortgage lender or servicer must be negotiated or applied for through a licensed mortgage loan originator. (Fin. Code, § 50002.5.)

3. On May 15, 2017, complainant issued an Accusation in Support of Notice of Intention to Issue Order Revoking Mortgage Loan Originator License of respondent. On July 18, 2017, complainant issued a First Amended Accusation in Support of Intention to Issue Order Revoking Mortgage Loan Originator License of respondent. By way of the First Amended Accusation, complainant seeks to revoke the mortgage loan originator license issued to respondent based upon his conduct in connection with his employment as a mortgage loan originator with AMP, as described below. Complainant further alleges that respondent withheld information or made a material misstatement when he filed an amendment to his application for license pursuant to the California Residential Mortgage Lending Act. (Fin. Code, § 50000 et seq.)

4. On May 30, 2017, respondent filed a Special Notice of Defense and Request for Hearing. Jurisdiction for these proceedings was established.

Financial Responsibility, Character, and General Fitness Requirements

5. Letter of Explanation/Lease Agreement. During 2016, respondent was employed as a mortgage loan originator by AMP. He was supervised by Mike Farr, manager of AMP’s Roseville Branch Office. Mr. Farr testified at hearing. On or around April 27, 2016, a loan processor brought an April 27, 2016 letter of explanation to Mr. Farr’s attention. The letter purported to explain that a certain investment property would now produce rental income to help qualify MM, the borrower, for a loan. The loan processor suspected that the signature on the letter of explanation was not MM’s. Mr. Farr obtained the original fresh ink signed letter of explanation from an office shredder.¹

Mr. Farr convened a meeting with respondent and his team members on May 2, 2016. AMP’s area manager, Greg Teeter, was also in attendance. Mr. Farr asked respondent and his team members about the letter of explanation, without showing them the original document. Respondent indicated that he had received the letter of explanation from MM via

¹ The original letter was placed in a shredder bin, but had yet to be shredded when it was retrieved.

agreement were dishonest acts due to the signature's and the modified lease document's lack of trustworthiness. His conduct further constituted acts to falsify the loan documents of his employer and were therefore fraudulent.

9. Borrower Debt Disclosure. During the course of the May 13, 2016 meeting with Mr. Farr and Mr. Teeter, respondent also admitted to not disclosing \$35,000 in debt on a loan application of a borrower (JS). He provided this loan application, omitting the \$35,000 obligation, to the loan processor. Failing to disclose all of a borrower's debt on his employer's loan application demonstrated respondent's lack of responsibility and dishonesty. AMP needed accurate information at the application stage to determine whether the borrower qualified for a loan.

10. Respondent acknowledged his failure to disclose this debt on JS's loan application. He explained that the borrower told him it would be paid off, and that it was unnecessary to disclose the debt since any debts would be verified again at the end of the loan process. Early and accurate disclosure is needed to ensure there is no misrepresentation to either the lender or the borrower during the entire loan approval process. Respondent's actions were tantamount to hiding the debt at the front-end of the loan process. Respondent further suggested that the loan he arranged for JS was eventually funded by AMP. This was not the case. Respondent submitted an exhibit showing a loan made by AMP to JS in the amount of \$470,250 for a Roseville property. However, the initial loan application of JS showed a different amount for a different address in Roseville, and the loan numbers were also different. The initial loan application of JS, for which respondent failed to disclose the debt, was turned down by AMP. When this loan was rejected due to excessive debt, the borrower complained to Mr. Farr about respondent's conduct.

It was established that respondent's failure to disclose the \$35,000 obligation on the loan application of JS demonstrated his lack of responsibility and dishonesty as a mortgage loan originator.

11. Employment Termination. Respondent was terminated from his employment with AMP, effective May 13, 2016. Mr. Farr and Mr. Teeter made the decision to terminate respondent during their May 13, 2016 meeting with respondent. Respondent admitted at that time to signing MM's name on the letter of explanation, modifying the lease agreement and not disclosing \$35,000 on a borrower's loan application. By his actions and admissions, respondent further acknowledged not being honest with his employer on May 2, 2016, regarding his conduct in signing the letter of explanation and modifying the lease agreement. Mr. Farr and Mr. Teeter testified credibly that their decision to terminate respondent was based upon respondent's dishonesty and perceived fraudulent behavior. Mr. Teeter indicated that he specifically communicated to respondent that he was being terminated for "fraud." Following their meeting, an Employee Termination Form was prepared and signed by Mr. Teeter. The form indicated that respondent's termination was involuntary and the reason for termination specified as follows: "Termination due to loan advisor admitting to forging borrower's signature, altering documentation, not disclosing borrower debts, customer complaints." The Employee Termination Form was not provided to respondent.

email. Mr. Farr then showed respondent the original copy of the letter of explanation with blue inked signature retrieved from the shredder bin. Respondent offered no explanation at that time other than, "I don't know where that came from."

6. On May 2, 2016, Mr. Farr also retrieved from the office shredder bin a copy of the lease agreement for the investment property owned by MM. The lease agreement had been modified to remove the name of an individual lessee (AM) who was related to MM. On May 2, 2016, Mr. Farr confronted respondent about the modified lease agreement. Respondent stated that MM had directed him to revise the lease agreement.

7. On May 13, 2016, respondent met with Mr. Farr and Mr. Teeter again. Respondent admitted at that time to signing the letter of explanation. He further admitted that he had altered the lease agreement on his own accord, without the direction of MM. Given respondent's admissions, it was established that respondent had been dishonest on May 2, 2016, when he denied knowing where the letter of explanation came from, and when he stated that MM had directed him to revise the lease agreement.

At hearing, respondent again suggested that MM authorized him to sign the letter of explanation on her behalf. However, he acknowledged that he had no power of attorney and he could not produce any other agency agreement from MM authorizing him to sign the document as her agent.² Respondent further suggested that the reason he modified the lease agreement was that AM had backed out of the lease. However, complainant submitted documentation of a Lexis address search performed on August 14, 2017, showing that AM lived in the leased property during and after the 2016 loan application was submitted to AMP, having resided there from June 2002 to July 2017. Respondent's testimony that AM was "not going to be able to rent" was neither persuasive nor credible.

8. It was established that respondent's act of removing AM's name from the lease agreement was done for the purpose of qualifying a borrower for a loan. He did this on his own accord. It potentially exposed both the borrower and AMP to a risk of loss. For example, the loan transaction would have been subject to contract defenses such as misrepresentation or lack of authority, thereby exposing the transaction to the risk of rescission and being set aside by either party. Moreover, MM admitted in her letter of explanation to not charging the market rate to family members. Without a reliable source of income to make loan payments, both the borrower and AMP would have been exposed to the risk of nonpayment on the loan. For all the above reasons, respondent's actions in signing MM's signature on the letter of explanation, and removing AM's name from the lease

² Complainant further noted that respondent, as an AMP employee, was an agent of AMP. Respondent had no authority from AMP to sign the document as it was falsified. (See Civ. Code, § 2306 regarding lack of authority for fraud on a principal.) As to MM, respondent's authority is null and void due to constructive fraud, since respondent did not disclose to his employer that he was acting for another principal. (*Baird v. Lasey* (1945) 71 Cal.App.2d 142 (a dual agency is deemed to be fraud upon the principal absent knowledge and consent of both principals).)

12. Respondent averred that his termination was not based upon fraud, and that it was mutual and voluntary. He indicated that he was never told that he was being fired for misconduct or fraud. He suggested instead that he left to avoid his "team" being fired or suffering some penalty, believing that he had a "great opportunity to go elsewhere, with better pay." He characterized his leaving as "more of a mutual departure." He also suggested that the fact that documents were in the shredder bin proves that they were not used, and that they were there precisely because he did not intend to use them.

Respondent's testimony that he was never told or believed he was fired was not credible. He acknowledged that he met with Mr. Farr and Mr. Teeter on May 13, 2016, because he had not been forthright with them during the earlier May 2, 2016 meeting. He described being very apologetic and remorseful for not coming clean earlier, and being fearful of the entire team getting fired. Both Mr. Farr and Mr. Teeter testified credibly, consistently and persuasively to what was communicated to respondent during the May 13, 2016 meeting. Respondent was terminated from their employ for dishonesty and fraud. The AMP Employee Termination Form prepared near in time to this event, further documented and confirmed the reasons for his involuntary termination. It was established that respondent was on notice of the reasons for his involuntary termination from AMP.

13. Loan Credit Promise. On June 15, 2016, Mr. Farr received a complaint from borrowers (JR and TR) that respondent had promised them a loan credit of \$1,000 which never materialized. The loan credit was promised to these borrowers to induce them to agree to a higher interest rate on their loan. The couple had locked in an interest rate of 3.75 percent, only to find that rates had dropped to 3.62 percent the following day. Respondent had advised them it would only be an \$18 difference in their monthly payment and, because they were so far along in the loan process, he would give them a credit of \$1,000 outside of escrow. Respondent did not make good on this promised credit, and AMP never authorized him to offer the credit. Respondent's promised loan credit was both unfair and dishonest to the borrowers as they had to pay the higher interest rate, and received no loan credit as promised by respondent. AMP was harmed because it was placed in a bad light with these borrowers.

Respondent first indicated that he did not promise the loan credit to JR and TR, and then indicated that he could not recall whether he promised the loan credit. Finally, he admitted that he authorized the loan credit and would have deducted it from his paycheck as a small matter. It was established that respondent made false promises of a loan credit to borrowers to induce them to agree to a higher interest rate on their loan.

14. Disguised Gifts. On May 26, 2016, AMP discovered that on or about May 5, 2014, respondent loaned a borrower (TT) \$120,000 to use as a disguised gift when applying and qualifying for a loan. AMP also discovered that on June 27, 2014, respondent loaned two borrowers (MH and SH) \$132,000 to use as a disguised gift when applying and qualifying for a loan.

15. Respondent is a partner in O.V. Investments. O.V. Investments made a loan of \$120,000 to TT on or about May 5, 2014. TT provided a gift letter to AMP dated May 13, 2014. Respondent was the loan originator on the AMP loan. The \$120,000 loan amount provided by O.V. Investments to TT matched exactly the amount of funds certified to close the AMP loan to TT. The certification of gift funds was confirmed by respondent. The AMP loan to TT closed on May 13, 2014, after O.V. Investments made its loan to TT. Respondent arranged for a falsified gift letter since the letter indicated that no funds were made available by a party with an interest in the real property, including the loan officer. At hearing, respondent acknowledged, regarding this transaction, that he “can’t do this again.”

16. Mr. Farr engaged his staff to determine whether there were any other similar loans made by respondent to AMP borrowers. Documents uncovered showed a loan in the amount of \$132,000 from O.V. Investments to MH and SH on June 27, 2014.³ Respondent was the loan originator on the AMP loan. The \$132,000 loan amount provided by O.V. Investments to MH and SH matched exactly the amount of funds on the gift letter. It appears from the evidence that the loan proceeds from O.V. Investments were diverted to relatives of MH and SH who, in turn, made the disguised gift to MH and SH. MH and SH submitted the loan application to AMP on June 27, 2014, the same date that the O.V. Investments loan was made to them. It was established that respondent arranged for a falsified gift letter based upon the letter’s statement that no funds were provided by an interested party including the loan officer.

17. Respondent engaged in competing acts with his employer, AMP, when he became a dual agent in the above loan transactions. Such demonstrated a lack of financial responsibility and dishonesty by not bringing the separate O.V. Investments loans to his employer’s attention. A dual agency is null and void and constructive fraud upon the principals unless there is full disclosure and knowledge of the facts by both principals. (Civ. Code, § 2306. *Baird v. Lasey, supra*, 71 Cal.App.2d 142.) Respondent’s actions were also dishonest because it placed additional debt on the borrowers and placed an unknown risk on AMP that the borrowers may not be able to repay both loans.

Material Misstatement on License Application

18. On May 25, 2016, respondent filed an amendment to his application (“Form MU4 application” or “application”) with the Commissioner pursuant to the California

³ At the time of hearing, ruling was reserved on the admission of Exhibits 36 and 38. Exhibit 36 is the same as Exhibit 42, which was already admitted into evidence. As both AMP supervisors indicated that there was no expectation of privacy on the AMP work computers, the objection to Exhibit 38 based upon privacy is overruled. The uncovered documents upon which Finding 16 is based included: 1) a wire of \$132,000 from O.V. Investments dated July 11, 2014; 2) a straight note dated June 27, 2014; 3) a deed of trust dated June 27, 2014; 4) a payoff statement dated July 22, 2014; 5) a bank balance of relatives who gifted the funds to MH and SH dated July 12, 2014; 6) an independent party letter from relatives MH and SH; and 7) the gift letter from MH and SH dated June 26, 2014.

Residential Mortgage Lending Act. The application provided notification that respondent changed employers from Finance of America Mortgage, LLC (NMLS No. 1411902) to Stearns Lending, LLC (NMLS No. 771975). Respondent answered “No” to the following question on his application:

(Q) Have you ever voluntarily resigned, been discharged, or permitted to resign after allegations were made that accused you of:

(1) violating statute(s), regulation(s), rule(s) or industry standards of conduct?

(2) fraud, dishonesty, theft, or the wrongful taking of property?

19. As noted in Findings 11 and 12, respondent’s employment with AMP was terminated based on allegations involving dishonest, fraudulent and unlawful conduct. By answering “No” to this question he withheld information or made a material misstatement in an application submitted to a regulator. Regardless of whether respondent was aware or believed that his conduct was fraudulent, he was clearly aware that his termination was involuntary and based upon his dishonest behavior. He acknowledged that falsifying information and hiding debt on loan applications, and making personal loans disguised as gifts on loan applications were dishonest acts. He understood that his employment termination from AMP was minimally based on dishonesty, warranting a “yes” response to this question. For these reasons it was established that respondent withheld information or made a material misstatement in an application for license or license renewal.

Appropriate Discipline

20. Complainant established by clear and convincing evidence cause to discipline respondent’s mortgage loan originator license. Given respondent’s dishonest actions in signing the letter of explanation, modifying a lease agreement, not disclosing \$35,000 in borrower debt, falsely promising a \$1,000 loan credit, and making disguised loans to borrowers from his own company, complainant has demonstrated that respondent fails to meet the responsibility, character and general fitness requirements of Financial Code section 50141. Respondent further withheld information or made a material misstatement in an application submitted to a regulator.

21. Respondent acknowledged little wrongdoing, and submitted no evidence in mitigation or rehabilitation at hearing. Given the nature and gravity of his offenses, which bear directly on the fiduciary responsibilities of a mortgage loan originator licensee, respondent bears a heavy burden in demonstrating rehabilitation. The amount of evidence required to establish rehabilitation varies according to the seriousness of the conduct at issue. (*In re Menna* (1955) 11 Cal. 4th 975, 987, 991.) Respondent’s conduct was serious. He engaged in several acts of dishonesty, fraud and statutory violations. His actions exposed his employer and borrowers to risks of loss for loans he arranged. In some of these loan

transactions, there was actual financial harm to either the borrower or to AMP. A mortgage loan originator is responsible for arranging residential mortgage loans worth, on a cumulative basis, millions of dollars. They constitute significant investments by both the lenders and the borrowers.

22. At hearing, respondent took little or no responsibility for his actions. He expressed no remorse. These are essential steps towards rehabilitation. A change in attitude from that which existed at the time of the commission of the misconduct in question is one of the criteria considered by agencies to evaluate rehabilitation. (*Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal. 3d 933, 940 [“Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation.”]) Thus, respondent has not demonstrated that he has taken even the first step on the road to rehabilitation.

Respondent has failed to command the confidence of the community and to warrant a determination that he will operate honestly, fairly, and efficiently within the purposes of the California Residential Mortgage Lending Act. Under these circumstances no consideration can be given to placing him on probation at this time. As complainant noted, “Lenders deserve trustworthy employees, and borrowers deserve honest services.” Protection of the public in this case requires revocation of respondent’s mortgage loan originator license.

LEGAL CONCLUSIONS

Burden of Proof

1. The burden of proof in this matter is on complainant to show by clear and convincing evidence to a reasonable certainty that respondent’s mortgage loan originator license should be suspended or revoked. (See, *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-56.)

Applicable Statutes and Regulations

2. Financial Code section 50513, subdivision (a), provides in pertinent part:

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

(1) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of this division, or any rules or regulations adopted thereunder.

(2) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 50141 or 50144,

or withholds information or makes a material misstatement in an application for a license or license renewal.

3. Financial Code section 50141, subdivision (a), provides that the Commissioner shall deny an application for mortgage loan originator license unless the Commissioner makes at minimum certain findings, including:

(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.

Violations

4. Cause for disciplinary action exists against respondent pursuant to Financial Code sections 50513, subdivision (a)(2), and 50141, subdivision (a)(3), by reason of the matters set forth in Findings 5 through 17. Respondent has failed to meet the responsibility, character and general fitness requirements of Financial Code section 50141, subdivision (a)(3). He cannot be trusted to operate honestly, fairly, and efficiently within the purposes of the California Residential Mortgage Lending Act.

5. Cause for disciplinary action exists against respondent pursuant to Financial Code section 50513, subdivision (a)(2), by reason of the matters set forth in Findings 11, 12, 18 and 19. Respondent withheld information or made a material misstatement in an application form when he failed to disclose that his employment termination was based on allegations accusing him of dishonesty, fraud or unlawful acts.

6. The matters set forth in Findings 20 through 22 were considered in making the following Order. It would be contrary to the public interest, safety and welfare to place respondent on probation at this time.

ORDER

Mortgage Loan Originator license issued to James Alexander Seibert, and regulated in California under authority of the Department of Business Oversight, is revoked pursuant to Legal Conclusions 4 and 5, jointly and individually.

DATED: November 15, 2017

DocuSigned by:



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings