

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JOSHUA SERRANO,

Respondent.

Case No.

OAH No. 2017050322

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 February 12, 2018

IT IS SO ORDERED this 10th day of January 2018

By: _____



BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JOSHUA SERRANO,

Respondent.

NMLS No. 1512675

OAH No. 2017050322

PROPOSED DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings, heard this matter on September 25, 2017, in Los Angeles, California.

Kelly Suk, Counsel, and Blaine A. Noblett, Senior Corporations Counsel, Department of Business Oversight (Department), represented complainant Jan Lynn Owen, Commissioner of Business Oversight (Commissioner).

Respondent Joshua Serrano represented himself.

Oral and documentary evidence was received and the matter was submitted for decision on September 25, 2017.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On October 17, 2016, respondent filed an application for a Mortgage Loan Originator License¹ with the Commissioner under the California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA), pursuant to Financial Code section 50140. Respondent submitted the application by filing a Form MU4 with the Nationwide Mortgage Licensing System on the internet.

¹ A mortgage loan originator is “an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.” (Fin. Code, § 50003.5, subd. (a).)

2. Respondent disclosed on the application that he had previously been convicted of an unspecified felony crime; had previously been convicted of an unspecified misdemeanor involving financial services, fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion; and had filed a personal bankruptcy petition or been subject of an involuntary bankruptcy petition. Respondent did not disclose he had unsatisfied judgments or liens against him on his application.

3. On May 4, 2017, the Commissioner filed a Statement of Issues and Notice of Intention to Deny Application for Mortgage Loan Originator License, alleging as grounds for denial that respondent: (1) was previously convicted of a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering; (2) has not demonstrated requisite financial responsibility to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently, and (3) has not demonstrated the 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 "Mortgage Loan Originator Law of California." (Ex. 1.)

4. Respondent submitted a Notice of Defense and requested a hearing.

Respondent's Application

5. Form MU4 at Question (A)(1) asked: "Have you filed a personal bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past 10 years?" Respondent answered, "Yes."

6. Form MU4 at Question (D) asked: "Do you have any unsatisfied judgments or liens against you?" Respondent answered, "No."

7. Form MU4 at Question (F)(1) asked: "Have you ever been convicted or pled guilty or nolo contendere ('no contest') in a domestic, foreign, or military court to any felony?" Respondent answered, "Yes." Respondent did not provide an explanation or supporting documentation for the disclosure, as required by the application.

8. Form MU4 at Question (H)(1) asked: "Have you ever been convicted of or pled guilty or nolo contendere ('no contest') in a domestic, foreign, or military court to committing or conspiring to commit a misdemeanor involving: (i) financial services or a financial services-related business, (ii) fraud, (iii) false statements or omissions, (iv) theft or wrongful taking of property, (v) bribery, (vi) perjury, (vii) forgery, (viii) counterfeiting, or (ix) extortion?" Respondent answered, "Yes."

///

///

9. Form MU4 at Question (K) asked a series of question, including:

“(K) Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever:

“(1) found you to have made a false statement or omission or been dishonest, unfair or unethical?

“(2) found you to have been involved in a violation of a financial services-related business regulation(s) or statute(s)?

[[¶]] . . . [¶]

“(5) revoked your registration or license?

[[¶]] . . . [¶]

“(9) entered an order concerning you in connection with any license or registration?”

Respondent answered, “No.” to all of the above-listed question.

10. Upon reviewing respondent’s Form MU4, Department Senior Corporation Examiner IV (Specialist) Meircee Boulhard contacted respondent regarding issues in his application and prepared a memo summarizing her findings. Ms. Boulhard testified at hearing regarding the Department’s findings and actions, as described below.

11. The Department discovered that, in 2007, the California Department of Real Estate (now Bureau of Real Estate) (BRE) suspended and revoked respondent’s BRE Salesperson License, contrary to his disclosure on Form MU4 Question (K).

12. As a result, on November 1, 2016, the Department instructed respondent to revise his Form MU4 by providing a detailed explanation and to upload supporting documentation in connection with his criminal disclosure MU4 Form Question (F)(1) and (H)(1). Respondent was further instructed to revise his Form MU4 by amending the answers responsive to Form MU4 Question (K) to “yes,” to provide a complete explanation for the events and reason for nondisclosure, and to provide applicable documentation.

13. On November 1, 2016, respondent filed an amended Form MU4. The amended MU4 Form provided further explanation of the criminal disclosure Form MU 4 Question (F)(1) and (H)(1). In summary, respondent wrote that he had been found guilty of grand theft on August 8, 2006, and that the case was subsequently dismissed. Respondent did not provide supporting court documentation regarding his conviction.

14. The amended Form MU4 at Question (K) also asked the same series of questions described in Factual Finding 9. Respondent amended his answer to "Yes," with supporting documentation regarding revocation of his BRE salesperson license.

15. On November 2, 2016, respondent filed a second amended MU4 Form, where respondent provided further documentation responsive to Questions (F)(1), (H)(1), and (K). Specifically, respondent uploaded the March 12, 2010 Minute Order whereby the court granted respondent's Penal Code section 1203.4 expungement motion, dismissed respondent's grand theft felony conviction and reduced the conviction to a misdemeanor.

Respondent's Felony Grand Theft by Embezzlement Conviction

16. On August 15, 2006, in the Superior Court of California, County of Riverside, Case No. RIF128366, respondent was convicted, based on his plea of guilty, of one count of grand theft by embezzlement, in violation of California Penal Code section 487, subdivision (a), a felony. The court suspended sentencing and placed respondent on supervised probation for three years, under various terms, including that he be committed to the custody of the Riverside County Sheriff for 150 days with the commitment to be served on consecutive weekends; pay fines, fees, and restitution; not sell real estate for three years; and, surrender his real estate salesperson license.

17. Respondent complied with the terms of his probation. On March 12, 2010, the Superior Court reduced the felony to a misdemeanor charge of Penal Code M487, subdivision (a), and dismissed the conviction pursuant to Penal Code section 1203.4 subdivision (a). (Factual Finding 15.)

18. Respondent does not dispute the conviction or its underlying facts and circumstances. Respondent explained his conviction resulted from actions he took as a licensed BRE salesperson. In 2005, respondent purchased a home in foreclosure from the owner and the proceeds were split between respondent and the prior owner. The prior owner then planned to rent the property from respondent, with the eventual goal of repurchasing the home from respondent at full market value, at such a time as the prior owner was able to secure financing. As a result of the fraudulent transaction, respondent stole \$71,594.18 from the prior owner.

19. Respondent's grand theft felony conviction involved an act of fraud, dishonesty, and breach of trust, as described in Financial Code section 50140, subdivision (a)(2)(A).

20. At hearing, respondent testified that he regretted the actions that led to his conviction and attributed his bad judgment to his youth, emphasizing that he was 27 years in 2005. He asserted that he had matured, had not made the same mistake in the past 13 years, and would not make the same mistake in the future, testifying that he was a different person at 40 years old than he had been at 27 years old.

Respondent's Bankruptcy and State Tax Lien

21. On August 7, 2013, respondent filed a Voluntary Petition under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court, Central District of California. He declared under penalty of perjury, in part, that he had one to 49 creditors, he had estimated assets of \$0 to \$50,000 and estimated liabilities of \$0 to \$50,000. On December 17, 2013, the United States Bankruptcy Court issued a Discharge of Debtor to respondent.

22. As previously described (Factual Finding 6), respondent represented on his application that he did not have any unsatisfied judgments or liens against him. However, contrary to his response, on May 5, 2010, California filed a state tax lien against respondent in the amount of \$1,095.83. As of the date of the hearing, respondent had not paid the state tax lien.

23. Respondent testified that he was forced to file for bankruptcy because he incurred medical expenses of \$50,000, which he was unable to pay due to his financial insolvency. No evidence was submitted to corroborate his claim of medical expenses. He further testified that he did not pay the state tax lien because he was not aware of the lien until the Department filed the Statement of Issues in this matter on May 4, 2017. Respondent provided no explanation as to why he had not paid the lien since he became aware of it in May 2017.

24. Respondent's 2013 bankruptcy and unsatisfied 2010 state tax lien fail to demonstrate the requisite financial responsibility, as described in Financial Code section 50140, subdivision (a)(3).

Respondent's Character and General Fitness

25. As previously described, respondent initially answered "No" on Form MU4 at Question K. (Factual Finding 9.) Ms. Boulahroud's checked the BRE public license information website and found that the BRE had revoked a salesperson license² issued to respondent on August 30, 2007. The Department then instructed respondent to amend his response and provide a detailed explanation with supporting document, which respondent did on November 1 and 2, 2016. (Factual Findings 10-15.)

26. On December 8, 2006, the BRE issued an Accusation against respondent. On August 30, 2007, the BRE entered an order revoking respondent's real estate license after respondent did not respond to the BRE's Accusation and did not enter a Notice of Defense. The BRE's cause for disciplinary action was based on respondent's August 15, 2006 criminal conviction. (Factual Finding 16.)

² The Statement of Issues incorrectly identified as a "real estate broker" license. (Exhibit 1, Statement of Issues at p. 6, line 14.)

27. In submitting his application and subsequent amendments, respondent signed the Form MU4 attesting, under penalty of perjury, that the answers were “current, true, accurate and complete [.]” (Exh. 11 at Exh. A, pp. DB00066-DB00067.) By initially answering “No,” instead of “Yes” on the application to Question (K), respondent made a material misrepresentation to the Commissioner.

28. Respondent’s misrepresentation during the mortgage loan originator license application (Factual Findings 25 and 27-28) and the conduct leading to the revocation of his real estate license (Factual Finding 26) cast doubt on respondent’s character and general fitness to command the confidence of the community and operate honestly and fairly as a mortgage loan originator, as described in Financial Code section 50140, subdivision (a)(3).

29. During his testimony, respondent provided no reasonable explanation for his failure to disclose his BRE license revocation on his application.

Rehabilitation

30. Respondent testified that he has paid a heavy price for his 2006 conviction, has changed and matured as a person, and is ready to sell mortgages again in California. He completed his state probation many years ago and his conviction has been dismissed. Respondent asked for leniency and testified he wanted to move forward with his life.

LEGAL CONCLUSIONS

1. Respondent bears the burden of proving that he meets all of the prerequisites necessary for the requested license. (See *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221.) This burden of proof requires proof by a preponderance of the evidence. (See Evid. Code, § 115.)

2. “An applicant for a license as a mortgage loan originator shall apply by submitting the uniform form prescribed for that purpose by the Nationwide Mortgage Licensing System and Registry.” (Fin. Code, § 50140, subd. (a).) The Commissioner “shall deny” the application unless she finds, among other things, that the applicant “has not been convicted of . . . a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application . . . , *or at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.*” (Fin. Code, § 50141, subd. (a)(2)(A), italics added.) Any such conviction requires denial of the application, regardless of the applicant’s rehabilitation, unless the conviction has been expunged or pardoned. (*Id.*, subd. (a)(2)(B); see also Fin. Code, §§ 4, 15 [as used in the Financial Code, the word “shall” is mandatory, unless the context otherwise requires].) However, the Commissioner may consider the underlying crime, facts, or circumstances of an expunged felony conviction when determining the eligibility of an applicant for licensure. (*Id.*)

3. Respondent's state conviction in 2006 was for felony grand theft by embezzlement under Penal Code section 487, subdivision (a) (as effective in 2006). (Factual Finding 16.) By its very nature, embezzlement involves acts of fraud and dishonesty, and a breach of trust. (*People v. Talbot* (1934) 220 Cal. 3, 13; Factual Finding 19.) Accordingly, cause exists pursuant to Financial Code section 50140, subd. (a)(2)(A) to deny respondent's application because his grand theft by embezzlement conviction involved an act of fraud, dishonesty, and a breach of trust. (Legal Conclusion 2.) Respondent provided no evidence to mitigate his fraudulent actions in defrauding a property owner undergoing foreclosure of over \$70,000 while respondent acted as a BRE licensee. Accordingly, despite the age of the conviction and the fact that respondent's conviction has been expunged, respondent has failed to demonstrate that he is eligible for licensure.

4. In addition, the Commissioner "shall deny" the application unless she finds that 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 [the CRMLA]." (Fin. Code, § 50141, subd. (a)(3).)


5. Based on respondent's 2013 bankruptcy and 2010 state tax lien, the Commissioner alleges that respondent should be denied a license because he has not demonstrated requisite financial responsibility. (Fin. Code, § 50141, subd. (a)(3).) However, respondent's testimony about his Chapter 7 bankruptcy calls into question which debts may be considered in support of the Commissioner's allegation. (See 11 U.S.C. § 525(a) [a governmental unit may not deny a license "solely because [a] bankrupt or debtor . . . has not paid a debt that is dischargeable . . . or that was discharged . . ."].) Respondent's 2010 state tax lien may be non-dischargeable (see 11 U.S.C. § 523(a)(1)), but there is insufficient evidence in the record to show that the Bankruptcy Court discharged the debt. In fact, respondent provides little detail regarding the circumstances of his bankruptcy aside from summarily asserting it was due to medical expenses. Further, respondent provided no reasonable justification for his delay in satisfying his 2010 state tax lien obligation. Accordingly, based on the evidence presented at hearing, cause exists pursuant to Financial Code section 50140, subdivision (a)(3) to deny his application based on his failure to demonstrate the requisite financial responsibility necessary to warrant licensure. (Factual Findings 21-24; Legal Conclusion 4.)

6. Finally, the Commissioner argues for denial of licensure because respondent has not demonstrated the requisite character and general fitness to warrant a determination that he will operate honestly, fairly, and efficiently within the Mortgage Loan Originator Law. (Fin. Code, § 50141, subd. (a)(3).) On this point, the evidence is clear and troubling. Respondent willfully made material misrepresentations to the Commissioner on his Form MU4 by, among other omissions, failing to disclose his 2007 BRE salesperson license revocation. (Factual Findings 25-29.) No reasonable explanation was provided for respondent's lack of candor. Cause exists, therefore, pursuant to Financial Code section 50140, subdivision (a)(3) to deny his application based on his failure to demonstrate the requisite character and general fitness necessary to warrant licensure. (Legal Conclusion 4.)

ORDER

Respondent Joshua Serrano's application for a mortgage loan originator license is denied.

DATED: October 24, 2017

DocuSigned by:

ABB1484FB193489..

IRINA TENTSER
Administrative Law Judge
Office of Administrative Hearings