

BEFORE THE  
DEPARTMENT OF BUSINESS OVERSIGHT  
STATE OF CALIFORNIA

In the Matter of the Commissioner of Business  
Oversight

OAH No. 2017031253

v.

MOUNT OLYMPUS MORTGAGE COMPANY,  
dba MOMCO, INC., TRU MORTGAGE, and  
TRU REVERSE,

Respondents.

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated September 5, 2017, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on

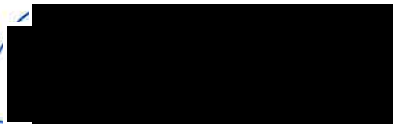
January 6, 2018

IT IS SO ORDERED this

6

day of

December 2017

  
JAN LYNN OWEN  
Commissioner of Business



BEFORE THE  
DEPARTMENT OF BUSINESS OVERSIGHT  
STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF BUSINESS  
OVERSIGHT,

Complainant,

v.

MOUNT OLYMPUS MORTGAGE  
COMPANY, dba MOMCO, INC., TRU  
MORTGAGE, and TRU REVERSE,

Respondent.

Case No. 413-1017

OAH No. 2017031253

**PROPOSED DECISION**

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on August 7, 2017.

Afsaneh Eghbaldari and Blaine Noblett, Counsel, Department of Business Oversight (Department), represented complainant Jan Lynn Owen, Commissioner of Business Oversight (Commissioner).

Chad Hummel, Esq., Sidley Austin LLP, represented respondent Mount Olympus Mortgage Company, dba MOMCo, Inc., Tru Mortgage, and Tru Reverse (Mount Olympus).

The matter was submitted on August 7, 2017.

**FACTUAL FINDINGS**

1. In June 2009, Mount Olympus became a licensed residential mortgage lender under the California Residential Mortgage Lending Act (Fin. Code, div. 20, § 50000 et seq.). As a licensee, it had to pay an annual assessment to the Commissioner "equal to the lesser of: (1) its pro rata share of all costs and expenses . . . that the [C]ommissioner reasonably

expects to incur in the current fiscal year in the administration of this division and not otherwise recovered by the [C]ommissioner under this division or from the State Corporations Fund, plus a deficit or less a surplus actually incurred during the prior fiscal year; or (2) five thousand dollars (\$5,000). . . .” (Fin. Code, § 50401, subd. (a).)

2. On September 28, 2016, the Department sent Mount Olympus a \$5,000 invoice for its annual assessment for fiscal year 2016/2017 through the Nationwide Mortgage Licensing System and Registry (NMLS). The NMLS is a “web-based system that allows state-licensed non-depository companies, branches, and individuals to apply for, amend, update, or renew licenses issued by state regulatory agencies.” (1 Negroni & Pfaff, Residential Mortgage Lending: State Regulation Manual West (Aug. 2017 supp.) California Mortgage Lending, § 4:2.) The Department also communicates with licensees through the NMLS. The due date for the payment was October 18, 2016.

3. On October 13, 2016, Mount Olympus sent a notice of intent to surrender its license to the Department through the NMLS. The notice stated the company expected to complete a closing audit within the next 30 days, and that all of the company’s California business had been managed under its Bureau of Real Estate broker’s license since January 1, 2016. The notice did not mention the assessment.

4. After submission of the notice, the NMLS “Status History” for it stated, “Approved-Surrender/Cancellation Requested.” Michael Arnall, President of Mount Olympus, testified he thought this meant the surrender was approved. But in fact, the Commissioner had not accepted (or rejected) the surrender. A license is not surrendered until the Commissioner accepts its tender in writing, makes a finding that the licensee’s plan of withdrawal from regulated business is satisfactory, and determines that there is no violation of the California Residential Mortgage Lending Act. (Fin. Code, § 50123, subd. (b).)

5. The due date for the \$5,000 assessment came and went without payment. Several months passed, with no communication from the Department, the Commissioner, or Mount Olympus about the assessment. On February 27, 2017, the Commissioner issued a summary revocation order, a copy of which was not offered into evidence. Mount Olympus immediately requested a hearing, and the Commissioner issued an amended summary revocation order on February 28, 2017, based on non-payment of the assessment. The company agreed to waive the 60-day time limit for holding the hearing on the amended order. (Fin. Code, § 50401, subd. (d).)

6. The Commissioner asserts summary revocation was justified, because Mount Olympus did not pay the assessment within 30 days of the due date. Mount Olympus asserts summary revocation was unjustified, because the company had given notice of its intent to surrender its license, and the Commissioner acted without notice or warning that the assessment was still due. As of the hearing date, the assessment remained unpaid.

## LEGAL CONCLUSIONS

1. “If a licensee fails to pay the assessment on or before the 30th day following the day upon which payment is due, the [C]ommissioner may by order summarily suspend or revoke the license issued to the licensee. . . .” (Fin. Code, § 50401, subd. (d).) Here, Mount Olympus was a licensee, and failed to pay the assessment on or before the 30th day after payment was due. (Factual Findings 2, 5.) The company’s notice of intent to surrender the license did not excuse it from paying the assessment, because a license “shall remain in effect until suspended, surrendered, or revoked,” and is not surrendered until the Commissioner accepts its tender in writing, makes a finding that the licensee’s plan of withdrawal from regulated business is satisfactory, and determines there is no violation of the California Residential Mortgage Lending Act. (Fin. Code, § 50123, subs. (a), (b).) The Commissioner never accepted the company’s surrender request. (Factual Finding 4.)

2. But Financial Code section 50401 uses the permissive word “may,” and empowers the Commissioner to summarily revoke *or* suspend the license for nonpayment. (Fin. Code, § 50401, subd. (d).) Thus, the Commissioner’s power to revoke is discretionary, and such discretion “ ‘ ‘is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action.’ ” [Citations.]” (*Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448, quoting *City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297; see also *In re Richard E.* (1978) 21 Cal.3d 349, 354 [“The ordinary import of ‘may’ is a grant of discretion.”].) “One of the tests suggested for determining whether the administrative body acted within the area of its discretion is whether reasonable minds may differ as to the propriety of the penalty imposed. The fact that reasonable minds may differ will fortify the conclusion that there was no abuse of discretion. [Citations.]” (*Lake v. Civil Service Commission* (1975) 47 Cal.App.3d 224, 228.)

3. Here, the facts do not warrant summary revocation, and reasonable minds may not differ about that conclusion. Mr. Arnall mistakenly thought the Commissioner approved the company’s surrender request (Factual Finding 4), and an approved surrender would logically justify nonpayment of the assessment. Furthermore, the only contacts from the Department to the company about the assessment were: (1) the original invoice; and (2) the Commissioner’s summary revocation order. (Factual Findings 2, 5.) In between those two contacts, Mount Olympus submitted a notice of intent to surrender its license before the assessment due date. (Factual Finding 3.) That due date came and went without payment, but the Department never contacted the company about the delinquency before the Commissioner imposed the maximum possible discipline (i.e., summary revocation). There was no evidence presented of a letter, email, telephone call, or NMLS message about the delinquency, and no evidence that the Commissioner assessed a required one percent late payment penalty. (See Fin. Code, § 50401, subd. (c).) Any of these acts would have alerted the company that the assessment remained due. Instead, the Department was silent about the delinquency until the Commissioner issued the summary revocation order several months later.

4. A licensee who does not pay the assessment should not be allowed to engage in regulated business. But the proper outcome in this case is summary suspension with an opportunity for Mount Olympus to pay the overdue assessment, not summary revocation. This lesser discipline is within the Commissioner's discretion, accounts for the lack of communication preceding the summary revocation order, and gives the company a chance to correct the violation. It is also equally protective of the public.


#### ORDER

All references to summary revocation in the Amended Order Summarily Revoking Residential Mortgage Lender License Pursuant to Financial Code Section 50401 against respondent Mount Olympus Mortgage Company, dba MOMCo, Inc., Tru Mortgage, and Tru Reverse, are modified to refer to summary suspension, as follows:

- (1) Caption (p. 1, lines 15-16) and footer (pp. 1-2): "Summarily Revoking" is modified to "Summarily Suspending"
- (2) Page 2, line 17: "summarily revoked" is modified to "summarily suspended"

As modified, the amended order is affirmed. Respondent has 30 days from the effective date of this order to pay the assessment, plus the late payment penalty specified in Financial Code section 50401, subdivision (c). Upon timely payment, the summary suspension shall be lifted.

DATED: September 5, 2017

  
CFDEA014211444  
**THOMAS HELLER**  
Administrative Law Judge  
Office of Administrative Hearings