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

10
11 In the Matter of:) CRMLA License No.: 413-0638
)
12 THE COMMISSIONER OF BUSINESS) ACCUSATION
13 OVERSIGHT,)
)
14 Complainant,)
)
15 v.)
)
16 VAN DYK MORTGAGE CORPORATION)
17 authorized to do business in California as)
18 VANDYK MORTGAGE CORPORATION,)
)
19 Respondent.)

20 The Complainant is informed and believes, and based upon such information and belief,
21 alleges and charges Respondent as follows:

22 I

23 **Introduction**

24 1. Van Dyk Mortgage Corporation authorized to do business in California as VanDyk
25 Mortgage Corporation (“VanDyk”) is licensed by the Commissioner of Business Oversight
26 (“Commissioner” or “Complainant”) as a residential mortgage lender pursuant to the California
27 Residential Mortgage Lending Act (“CRMLA”) (Fin. Code §50000 et seq.). VanDyk has its
28 principal place of business located at 2449 Camelot Court SE, Grand Rapids, Michigan 49546.

1 VanDyk currently has 12 branch office locations under its CRMLA license located in California and
2 elsewhere. VanDyk employs mortgage loan originators in its CRMLA business.

3 II

4 CRMLA Violations

5 2. On or about November 5, 2015, the Commissioner, by and through staff, commenced
6 a regulatory examination of the books and records of VanDyk under the CRMLA (“2015 regulatory
7 examination”). The 2015 regulatory examination disclosed that VanDyk (i) was failing to properly
8 reconcile certain of its trust accounts in violation of Financial Code section 50314 and California
9 Code of Regulations, title 10, section 1950.314.1; (ii) was commingling its own funds with trust
10 funds in violation of Financial Code section 50202, subdivision (a); (iii) was causing debit balances
11 (shortages) to exist in certain of its trust accounts in violation of California Code of Regulations, title
12 10, section 1950.314.6; (iv) had failed to properly designate one of its trust accounts as a trust
13 account in violation of Financial Code section 50502, subdivision (c); and (v) had charged borrowers
14 per diem interest in excess of one day prior to the disbursement of loan proceeds in violation of
15 Financial Code section 50204, subdivision (o).

16 Trust Account Violations

17 3. In 2015, VanDyk maintained its trust accounts at PNC Bank, which included a Fannie
18 Mae tax and insurance trust account (“FNMA T&I Account”), an account for impound/escrow and
19 FHA and VA mortgage insurance premium trust funds – California only - (“Escrow Account”), an
20 account for repair trust funds (“Repair Account”), and an account for appraisal and credit report fees
21 (“Upfront Fees Account”) (collectively referred to as the “PNC Trust Accounts”). The FNMA T&I
22 Account held borrower funds to be later paid for taxes and insurance; the Escrow Account held
23 funds to be paid for impounds along with FHA and VA mortgage insurance premiums; the Repair
24 Account held funds to be paid for repairs to mortgaged properties; and the Upfront Fees Account
25 held funds to pay for appraisals and credit reports used in making loan determinations. The trust
26 funds held in the PNC Trust Accounts are to be held until time for disbursement to the appropriate
27 investor, tax authority, insurance company, contractor, appraiser or credit report vendor.

1 4. A review of the reconciliations for the PNC Trust Accounts for July, August, and
2 September 2015 revealed that VanDyk:

3 (a) Failed to properly reconcile the FNMA T&I account for the periods ended July 31,
4 August 31, and September 30, 2015 due to \$3,108.44 in unallocated funds on deposit in the account,
5 i.e. funds that could not be tied to any specific loan on the liability ledger;

6 (b) Failed to properly reconcile the Escrow Account for the periods ended July 31, August
7 31, and September 30, 2015 due to undetected excess company funds on deposit in the account in
8 the respective amounts of \$1,901.35, \$5,034.21, and \$13,218.48 for the periods ended July 31,
9 August 31, and September 30, 2015. The existence of company funds on deposit in a trust account,
10 except as allowed to prevent a debit balance, also constitutes commingling;

11 (c) Failed to properly reconcile the Repair Account for the periods ended July 31 and
12 September 30, 2015 due to the receipt of repair trust funds from loans originated in July and
13 September 2015 that were posted to the liability ledger, but the funds were not transferred to the
14 Repair Account until the following month. VanDyk's failure to timely transfer repair funds into the
15 Repair Account caused a shortage to exist in the Repair Account in the respective amounts of
16 \$19,335.72 and \$47,318.96 for the periods ended July 31 and September 30, 2015. VanDyk also
17 failed to designate the Repair Account as a trust account, which VanDyk had previously been cited
18 for in the prior regulatory examination commenced in September 2011; and

19 (d) Failed to properly reconcile the Upfront Fees Account for the periods ended July 31,
20 August 31, and September 30, 2015 due to its failure to take numerous debit balances and
21 unallocated amounts into account. The numerous debit balances and unauthorized bank fees caused a
22 shortage to exist in the Upfront Fees Account in the respective amounts of \$32,323.83, \$19,025.64,
23 and \$6,697.74 for the periods ended July 31, August 31, and September 30, 2015.

24 **Per Diem Interest Overcharges**

25 5. The 2015 regulatory examination further disclosed that in three of the 25 funded
26 loans reviewed for per diem interest, or approximately 12%, VanDyk was charging the borrower per
27 diem interest in excess of one day prior to the disbursement of loan proceeds. A California
28 Additional Per Diem Interest Charge Disclosure was found in all three of the loans with per diem

1 interest overcharges. However, the disclosures were not prepared in accordance with Civil Code
2 section 2948.5(b), and therefore were not considered in calculating per diem interest charges. The
3 per diem interest overcharges averaged \$133.92 per loan. The range of per diem interest
4 overcharges was between \$45.03 and \$201.10. The range of days that interest was overcharged was
5 between two and six.

6 6. The Commissioner had found that VanDyk was overcharging per diem interest during
7 the last regulatory examination under the CRMLA that commenced in September 2011. Based upon
8 the findings of the 2011 regulatory examination, the Commissioner instructed VanDyk to implement
9 such procedures as necessary to ensure that per diem interest was not overcharged in the future.

10 III

11 **Suspension and Penalty Statutes**

12 7. Financial Code section 50327 provides in pertinent part:

13 (a) The commissioner may, after notice and a reasonable opportunity to
14 be heard, suspend or revoke any license, if the commissioner finds that:

15 (1) the licensee has violated any provision of this division or rule or order
16 of the commissioner thereunder; or (2) any fact or condition exists that, if
17 it had existed at the time of the original application for license, reasonably
18 would have warranted the commissioner in refusing to issue the license originally.

19 8. Financial Code section 50513 provides in pertinent part:

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

21 (4) Impose fines on a mortgage loan originator or any residential mortgage
22 lender or servicer licensee employing a mortgage loan originator pursuant
23 to subdivisions (b), (c), and (d).

24 (b) The commissioner may impose a civil penalty on a mortgage loan originator
25 or any residential mortgage lender or servicer licensee employing a mortgage
26 loan originator, if the commissioner finds, on the record after notice and
27 opportunity for hearing, that the mortgage loan originator or any residential
28 mortgage lender or servicer licensee employing a mortgage loan originator
has violated or failed to comply with any requirement of this division or any
regulation prescribed by the commissioner under this division or order issued
under authority of this division.

1 (c) The maximum amount of penalty for each act or omission described in
2 subdivision (b) shall be twenty-five thousand dollars (\$25,000).

3 (d) Each violation or failure to comply with any directive or order of the
4 commissioner is a separate and distinct violation or failure.

5 **IV**

6 **Conclusion**

7 9. The Commissioner finds that, by reason of the foregoing, VanDyk has violated
8 Financial Code sections 50202, subdivisions (a) and (c), 50314, and 50204, subdivision (o), and
9 California Code of Regulations, title 10, sections 1950.314.1 and 1950.314.6, and based thereon,
10 grounds exist to (i) suspend the residential mortgage lender licenses of VanDyk, and (ii) assess
11 penalties against VanDyk pursuant to Financial Code section 50513, subdivision (b).

12 **V**

13 **Prayer**

14 WHEREFORE, IT IS PRAYED that:

15 1. Pursuant to Financial Code section 50327, the residential mortgage lender licenses of
16 VanDyk be suspended for a period of up to 12 months;

17 2. Pursuant to the Financial Code section 50513, subdivision (b), a penalty be levied
18 against VanDyk for failure to properly reconcile its trust accounts on a monthly basis, in violation of
19 Financial Code section 50314 and California Code of Regulations, title 10, section 1950.314.1
20 according to proof, but in an amount of at least \$15,000.00.

21 3. Pursuant to the Financial Code section 50513, subdivision (b), a penalty be levied
22 against VanDyk for commingling its own funds with trust funds in violation of Financial Code
23 section 50202, subdivision (a) according to proof, but in an amount of at least \$15,000.00;

24 4. Pursuant to the Financial Code section 50513, subdivision (b), a penalty be levied
25 against VanDyk for causing debit balances (shortages) to exist in two of its trust accounts in
26 violation of California Code of Regulations, title 10, section 1950.314.6 according to proof, but in an
27 amount of at least \$15,000.00;

28 5. Pursuant to the Financial Code section 50513, subdivision (b), a penalty be levied
against VanDyk for failing to properly designate one of its trust accounts as a trust account in

1 violation of Financial Code section 50502, subdivision (c) according to proof, but in an amount of at
2 least \$10,000.00; and

3 6. Pursuant to the Financial Code section 50513, subdivision (b), penalties be levied
4 against VanDyk for at least three violations of Financial Code sections 50504, subdivision (o),
5 overcharging per diem interest, according to proof, but in an amount of at least \$1,000.00 per
6 violation.

7 Dated: May 11, 2016
8 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

9 By _____
10 Judy L. Hartley
11 Senior Counsel
12 Enforcement Division
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