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

11 In the Matter of:) CRMLA LICENSE NO.: 413-0364
12)
13 THE COMMISSIONER OF BUSINESS) ACCUSATION
OVERSIGHT,)
14)
15 Complainant,)
16 v.)
17)
18 DHI MORTGAGE COMPANY, LTD., L.P.,)
19 Respondent.)
20)

21 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), is informed and
22 believes, and based upon such information and belief, alleges and charges Respondent DHI Mortgage
23 Company Ltd., L.P. (DHI), as follows:

24 I.

25 **Jurisdiction and Venue**

26 1. The Commissioner is authorized to administer and enforce the provisions of the
27 California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.) and the rules
28

1 issued under title 10 of the California Code of Regulations (CCR) that regulate the business and
2 activities of residential mortgage lenders and mortgage loan servicers.

3 2. The Commissioner brings this action under the provisions of Financial Code section
4 50513 and the rules and regulations promulgated thereunder.

5 **II.**

6 **Statement of Facts**

7 3. DHI is a residential mortgage lender licensed by the Commissioner under the
8 CRMLA. DHI has its principal place of business located at 10700 Pecan Park Boulevard, Suite 450,
9 Austin, Texas. At all relevant times herein, DHI employed mortgage loan originators and operated
10 branch locations throughout California.

11 4. The Commissioner commenced a regulatory examination of the licensee on or about
12 June 5, 2017.

13 5. The examination disclosed, in five out of the 21 funded loan files Department staff
14 reviewed, DHI overcharged borrowers' per diem interest in excess of one day prior to the
15 disbursement of loan proceeds in violation of Financial Code section 50204, subdivision (o) (an
16 exception rate of 24 percent). During DHI's prior examination that commenced on or about May 13,
17 2013, the Commissioner cited the company for per-diem-interest overcharges in one out of 20 loan
18 files reviewed during the examination (a 5-percent exception rate).

19 6. The following is a summary of the five loan files in which DHI overcharged
20 borrowers' per diem interest:

21 a. Loan Number 1091257

22 Per the closing disclosure document, DHI charged the borrower 23 days interest (from April 8
23 to May 1, 2016) at \$48.09 interest per day for a total of \$1,106.07. The first payment on the note was
24 due by June 1, 2016; therefore, interest began to accrue on the loan beginning May 1. But per the
25 disbursement ledger, the majority of loan proceeds actually disbursed on April 12. The CRMLA
26 permitted DHI to charge the borrower 19 days of interest from April 12 to May 1, plus one additional
27 day of interest per Civil Code section 2948.5, subdivision (a), or \$961.84. DHI overcharged the
28 borrower three days' interest or \$144.23.

1 b. Loan Number 1122356

2 Per the closing disclosure document, DHI charged the borrower one day of interest (from
3 September 30 to October 1, 2016) at \$75.34 interest per day. The first payment on the note was due
4 November 1, 2016; therefore, interest began to accrue on the loan beginning October 1. But
5 according to the disbursement ledger, the majority of loan proceeds actually disbursed on October 6,
6 and DHI should have provided the borrower four days interest credit. DHI should have also credited
7 the borrower the one-day per-diem-interest charge on September 30, or \$376.71. DHI overcharged
8 the borrower five days of interest or \$376.71.

9 c. Loan Number 990839

10 Per the final settlement statement, DHI charged the borrower five days interest (from
11 September 26 to October 1, 2014) at \$40.27 interest per day for a total of \$201.35. The first payment
12 on the note was due by November 1, 2014; therefore, interest began to accrue on the loan beginning
13 October 1. But according to the disbursement ledger, the majority of loan proceeds disbursed on
14 September 30. The CRMLA permitted DHI to charge the borrower one day of per diem interest, plus
15 one additional day of interest per Civil Code section 2948.5, subdivision (a), or \$80.53. DHI
16 overcharged the borrower three days' interest or \$120.82.

17 d. Loan Number 984839

18 Per the final settlement statement, DHI charged the borrower 15 days interest (from October
19 17 to November 1, 2014) at \$52.20 interest per day for a total of \$783.00. The first payment on the
20 note was due by December 1, 2014; therefore, interest began to accrue on the loan beginning
21 November 1. The majority of loan proceeds disbursed on October 17. The CRMLA permitted DHI to
22 charge the borrower one additional day of interest prior to the date the borrower's proceeds disbursed;
23 however, DHI did not collect the additional day of per diem interest. But, per the final settlement
24 statement, the loan had an interest rate of 3.375 percent. DHI should have calculated the daily per-
25 diem-interest rate based on the borrower's 3.375-percent interest rate. Instead, DHI charged the
26 borrower additional interest based on a higher 4.125-percent interest rate. A DHI representative, by e-
27 mail, informed the examiner that the company had made a calculation error in computing the
28 borrower's daily per-diem-interest rate. Based on the lower interest rate, DHI should have charged the

1 borrower \$683.36 for 16 days of per diem interest from October 16 to November 1. DHI overcharged
2 the borrower \$99.64.

3 e. Loan Number 1139387

4 Per the closing disclosure document, DHI charged the borrower nine days interest (from
5 December 23, 2016 to January 1, 2017) at \$56.70 interest per day. The borrower's first payment on
6 the note was due February 1, 2017; therefore, interest began to accrue on the loan beginning January
7 1, 2017. But according to the disbursement ledger, the majority of loan proceeds actually disbursed
8 on December 27. The CRMLA permitted DHI to charge the borrower five days of interest from
9 December 27 to January 1, plus one additional day of interest per Civil Code section 2948.5,
10 subdivision (a), or \$340.21. DHI overcharged the borrower \$170.09 for three days per diem interest.

11 **III.**

12 **Applicable Statutes**

13 7. Civil Code section 2948.5, provides:

14 (a) A borrower shall not be required to pay interest on a principal
15 obligation under a promissory note secured by a mortgage or deed of
16 trust on real property improved with between one to four residential
17 dwelling units for any period that meets any of the following
18 requirements:

18 (1) Is more than one day prior to the date that the loan proceeds are
19 disbursed from escrow.

20 (2) In the event of no escrow, if a request for recording is made in
21 connection with the disbursement, is more than one day prior to the
22 date the loan proceeds are disbursed to the borrower, to a third party on
23 behalf of the borrower, or to the lender to satisfy an existing obligation
24 of the borrower.

25 (3) In all other circumstances where there is no escrow and no request
26 for recording, is prior to the date funds are disbursed to the borrower, to
27 a third party on behalf of the borrower, or to the lender to satisfy an
28 existing obligation of the borrower.

(b) Interest may commence to accrue on the business day immediately
preceding the day of disbursement, for obligations described in
paragraphs (1) and (2) of subdivision (a) if both of the following occur:

1 (1) The borrower affirmatively requests, and the lender agrees, that the
2 disbursement will occur on Monday, or a day immediately following a
3 bank holiday.

4 (2) The following information is disclosed to the borrower in writing:

5 (A) the amount of additional per diem interest charged to facilitate
6 disbursement on Monday or the day following a holiday, as the case
7 may be, and (B) that it may be possible to avoid the additional per diem
8 interest charge by disbursing the loan proceeds on a day immediately
9 following a business day. This disclosure shall be provided to the
10 borrower and acknowledged by the borrower by signing a copy of the
11 disclosure document prior to placing funds in escrow.

12 (c) This section does not apply to a loan that is subject to subdivision
13 (c) of Section 10242 of the Business and Professions Code.

14 8. Financial Code section 50204, provides in pertinent part, "A licensee may not do any
15 of the following . . . (o) Commit an act in violation of Section 2948.5 of the Civil Code[.]"

16 9. Financial Code section 50327 provides:

17 (a) The commissioner may, after notice and a reasonable opportunity
18 to be heard, deny, decline to renew, suspend, or revoke any license if
19 the commissioner finds that:

20 (1) The licensee has violated any provision of this division or any rule
21 or order of the commissioner thereunder.

22 (2) Any fact or condition exists that, if it had existed at the time of the
23 original application for the license, reasonably would have warranted
24 the commissioner in refusing to issue the license originally.

25 (b) The power of investigation and examination by the commissioner
26 is not terminated by the denial, nonrenewal, surrender, suspension, or
27 revocation of any license issued by him or her.

28 10. Financial Code section 50513 provides in pertinent part:

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

(4) Impose fines on a mortgage loan originator or any residential

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WHEREFORE, IT IS PRAYED that:

Under Financial Code section 50327, the Commissioner suspend DHI's residential mortgage lender license for a period of up to 12 months and, under Financial Code section 50513, subdivision (b), levy penalties against DHI for at least five violations of Financial Code section 50204, subdivision (o), overcharging per diem interest, according to proof, but in an amount of at least \$7,000.00 per violation.

Dated: January 9, 2019
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Blaine A. Noblett
Senior Counsel
Enforcement Division