

BEFORE THE  
DEPARTMENT OF BUSINESS OVERSIGHT  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
against:

JAMES ADAM WHITE,

Respondent.

NMLS No. 1580566

OAH No. 2018010052

**DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on July 3, 2018. Vanessa T. Lu and Blaine Noblett, both Corporations Counsels, represented complainant Jan Lynn Owen, Commissioner of Business Oversight. Robert M. Lott, Attorney at Law, represented respondent James Adam White, who was not present at the hearing.

Complainant seeks to deny respondent a mortgage loan originator (MLO) license based on allegations that respondent made untrue statements in connection with an application for MLO licensure and that respondent failed to demonstrate the requisite financial responsibility, character, and fitness to be licensed as an MLO. Respondent denies the allegations.

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision on July 3, 2018.

The Proposed Decision was issued by the Administrative Law Judge on July 31, 2018. On October 12, 2018, all parties were served with an Order of Rejection of Proposed Decision in accordance with Government Code section 11517, subdivision (c)(2)(E). The Proposed Decision was rejected on the following basis:

Whether Sections 22109.1, subdivision (a)(2)(A), and 50141, subdivision (a)(2)(A), of the Financial Code require the Commissioner of Business Oversight to deny an application for a mortgage loan originator license if the applicant was convicted of, or pled guilty to a felony in a domestic court at any time preceding the date of application and the felony involved an act of fraud, dishonesty or a breach of trust.

The parties were notified that the case would be decided by the Commissioner upon the record, and upon any written argument offered by the parties. The written arguments were due by November 1, 2018.

Complainant and respondent submitted timely arguments. The Commissioner considered the arguments that were relevant to the reason for rejecting the Proposed Decision.

### FACTUAL FINDINGS

1. Complainant made the Statement of Issues while acting in an official capacity.

2. On January 23, 2017, respondent filed Form MU4, an application for licensure as a MLO, through the Nationwide Mortgage Licensing System, with the Commissioner at the Department of Business Oversight (DBO). Respondent certified his application under penalty of perjury and represented that the information he provided in his application is true and correct. The application requires respondent to make several disclosures, including the following financial, criminal, and employment-related disclosures, which are set forth with respondent's responses as noted in Exhibit 9:

a. "Have you filed a personal bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past 10 years?" Respondent checked the "Yes" box accompanying the question, and he provided an explanation stating, "I filed bankruptcy in 2012 case#: 6:12bk-27869-SC which was discharged 11/13/12."

b. "Do you have any unsatisfied judgments or liens against you?" Respondent checked the "Yes" box accompanying the question, and he provided an explanation stating, "I was sued by my Home Owner's association for delinquent HOA fees with an outstanding balance of \$3,000.00. In my felony conviction I was ordered to pay restitution in the amount of 250,000+ currently the remaining balance is approximately 40,000.00."

c. "Have you ever been convicted or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any felony?" Respondent checked the "Yes" box accompanying the question, and he provided an explanation stating, "In 2002 I was convicted of a felony for misappropriation of bank funds under 18 USC 656 2(b) which occurred during my employment at Wells Fargo Bank."

d. "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 checked the "No" box accompanying the question.

e. "Have you ever voluntarily resigned, been discharged, or permitted to resign after allegations were made that accused you of:  (2) fraud, dishonesty, theft, or the wrongful taking of property?" Respondent checked the "Yes" box accompanying the question, and he provided an explanation stating, "I resigned from the bank that I was employed by when the allegation was made against me. I was asked to resign but the resignation was accepted."

3. Sandra Roldan works at the DBO as an examiner with responsibility for, among other things, approving or denying MLO applications based on her determination whether the applicant satisfies the financial fitness and good character requirements for licensure. Roldan reviewed respondent's MLO application and determined that his application was deficient. At the administrative hearing Roldan explained that respondent provided no documentation in conjunction with his responses to the questions set forth in Factual Finding 2, and that the required documentation included copies of court records, judgments and liens, and records of employment termination or resignation. Roldan concluded that respondent provided an incomplete application, and she notified respondent accordingly with instructions for his submission of the required documentation.

4. On March 9, 2017, respondent submitted an amended MLO application on Form MU4. (Exh. 10.)

a. Respondent provided the following explanation for his resignation from Wells Fargo Bank:

I resigned from Wells Fargo Bank in connection with and during the investigation of the fraud that I was being accused of in January 1997. I do not have any documentation surrounding the resignation as it has been over 20 years ago. I was not ordered to resign nor was I terminated from my position. I submit this information even though it is extremely old due to the fact that I want [to] provide full disclosure and not sure if the information is even needed for your review.

b. 1. Respondent provided copies of several court documents disclosing that on August 4, 2003, in the United States District Court for the Central District of California, in *United States vs. James Adam White*, in case number 5:02-cr-00011-RT-1, respondent was convicted as charged on his guilty plea to two counts of violating Title 18 United States Code, sections 2(b) (Causing an Act to be Done) and 656 (Misapplication of Bank Funds), felonies. The court adjudged respondent guilty, and ordered respondent to serve one day in the custody of the Bureau of Prison and, upon release from imprisonment, to supervised release for a term of five years with standard conditions of supervision, including respondent's payment of restitution totaling \$233, 541.41 to Wells Fargo Bank. The court subsequently issued a Nunc Pro Tunc Order Amending the Original Judgment and Commitment Order Entered to reflect that respondent's liability to Wells Fargo Bank in the amount of \$233,541.41 was joint and several with one individual up to the amount of \$35,641.71 and with another individual up to the amount of \$198,000.

2. The facts and circumstances underlying respondent's conviction are set forth in an Information charging that during the course of his employment with Wells Fargo as a manager, respondent knowingly and willfully misapplied, embezzled, abstracted, and purloined the sums of approximately \$36,710, during the period March 20, 1996 through May 15, 1996. To effectuate his felonious conduct, respondent opened Wells Fargo Bank accounts for his own purposes into which he made wire transfers or deposited stolen checks or checks for which he knew there were insufficient funds in the accounts on which the checks were drawn and then respondent paid himself and others from the Wells Fargo Bank accounts he opened. (See Exh. 4.)

c. Respondent provided a copy of the Notice of Entry of Judgment in *Lake Gills Maintenance Corporation v. James A. White* (Super. Ct. Riverside County, 2014, RIC1409818) attaching as an exhibit the Judgment of Foreclosure of Real Property Assessment Lien and Money Judgment (Judgment of Foreclosure). The Judgment of Foreclosure decrees that respondent had an outstanding liability to a homeowners' association in an amount totaling \$7,058.24, and that amount was secured by a real property assessment lien recorded against real property in Riverside County. The Judgment of Foreclosure also decrees that respondent received a bankruptcy discharge in Case No. 6:12-bk-27869-SC, which relieved him of certain personal obligations.

5. At the administrative hearing, Roldan explained that after she reviewed respondent's amended MLO application she determined that respondent was not eligible for MLO licensure because respondent's felony convictions involved dishonesty. Roldan opined that respondent "appeared dishonest" because he changed his statement regarding his resignation from Wells Fargo Bank. Roldan noted that, on one hand respondent claimed that the bank asked for his resignation and that, on the other hand respondent claimed he resigned and the bank accepted his resignation. According to Roldan, "It just didn't make sense. Why would he resign if he was not guilty? He was convicted for a felony."

#### *Factors in Aggravation, Mitigation, and Rehabilitation*

6. No evidence of mitigation or rehabilitation was offered at the administrative hearing.

7. At the administrative hearing, counsel for respondent argued that respondent "complied with every request asked of him—he fully disclosed." Counsel argued that the DBO conducted no investigation and "just looked at documents and concluded that there was a violation of their rules. They didn't do any investigation. . . . We have to look past a bunch of documents." Alluding to the passage of the Dodd-Frank Act, counsel argued further that respondent "is more a victim more than anything else. [Respondent] is caught up in this new wave of scrutiny that didn't apply to him."

### LEGAL CONCLUSIONS

1. Respondent bears the burden of producing proof of his eligibility for MLO licensure. (Govt. Code, § 11504; *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.)

2. Both the California Financing Law and the California Residential Mortgage Lending Act, in identical statutory language, authorize the commissioner to deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following pertinent findings:

(2)(A) The applicant has not been convicted of, plead guilty or nolo contendere to, a felony in domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering. Whether a particular crime is classified a felony shall be determined by the law of the jurisdiction in which the individual is convicted. [¶]

(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 [the California Financing Law and the California Residential Mortgage Lending Act].

(Fin. Code, §§ 22109.1 and 50141.)

3. The California Residential Mortgage Lending Act authorizes the commissioner to deny a license upon finding the following:

The licensee has violated any provision of this division or any rule or order of the commissioner thereunder.

Any fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally[.]

(Fin. Code, § 50327.)

4. The California Residential Mortgage Lending Act provides that it is unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of the division. (Fin. Code, § 50512.)

5. In paragraph 17 of the accompanying Statement of Issues, complainant alleges that “White provided false responses to Criminal Disclosure Questions [see Factual Findings 2d and 2c] in his Application and Amended Application. White’s failure to disclose his felony conviction of misappropriation of bank funds under 18 U.S.C. 656 2(b) shows White does not meet the requirements for licensure as a MLO under Financial Code section 50141 and 22109.1, wherein the applicant must demonstrate ‘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 purposes of this division.’”

6. The allegation that respondent provided false responses to criminal disclosure questions or that respondent failed to disclose his felony conviction is not established by competent, credible evidence. Respondent in fact disclosed in his initial application that he was a convicted felon: “In 2002 I was convicted of a felony for misappropriation of bank funds under 18 USC 656 2(b) which occurred during my employment at Wells Fargo Bank.” (Factual Finding 2c.) And while his application was under review, he responded to Roldan’s request for documentation by submitting to her copies of relevant court records. (Factual Finding 4b.)

Respondent's "No" answer to the query whether he had "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" is not a false response because respondent has no misdemeanor conviction arising from his admitted felonious conduct. Respondent was convicted in a federal district court where the applicable law evidently classifies respondent's crime as a felony. (Exhs. 4 and 5.)

7. In paragraph 18 of the Statement of Issues, complainant alleges that "[b]ased upon White's contradictory statements and his failure to disclose his termination, White does not meet the requirements for licensure as a MLO under Financial Code section 50141 and 22109.1, wherein the applicant must demonstrate '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 purposes of this division.'"

8. In both his initial and amended MLO licensure applications respondent answered "Yes" to the question, "Have you ever voluntarily resigned, been discharged, or permitted to resign after allegations were made that accused you of: [¶] (2) fraud, dishonesty, theft, or the wrongful taking of property?" It is irrelevant whether it was respondent or his employer who instigated the resignation. What is relevant is that respondent's resignation was occasioned by investigation of accusations in connection with his fraud, dishonesty, theft, or wrongful taking of property. No credible evidence was offered to rebut the fact that respondent resigned while under investigation or that respondent provided answers disclosing that fact. It is not established that respondent failed to disclose his termination.

9. In paragraph 19 of the Statement of Issues, complainant alleges that "White's felony conviction of misapplication of bank funds, outstanding judgments and liens, and bankruptcy filing proves White does not meet the requirements of licensure as a MLO, wherein the applicant must demonstrate '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 purposes of this division.'"

10. Respondent's felony conviction occurred in 2003, approximately one and one-half decades ago. His felonious conduct involved an act or acts of fraud, dishonesty or breach of trust. Respondent fraudulently opened bank accounts for his own purposes while employed as a bank manager, deposited stolen checks and other monies in these bank accounts and then paid himself and others from the bank accounts he opened. Therefore, as provided for in the applicable statutes set forth in Legal Conclusion 2, the Commissioner is required to deny respondent's application for MLO licensure on the basis of respondent's August 4, 2003 felony conviction.

11. The facts and circumstances underlying respondent's August 4, 2003 felony conviction reasonably warranted the commissioner's refusal to grant respondent's application for MLO licensure. While employed as a bank manager, respondent purloined monies entrusted to his care. The seriousness and extent of respondent's felonious conduct have not diminished with the passage of time. Such misconduct—the knowing and willful misapplication of funds to which his employment provided access—evinces respondent's dishonesty as well as his

untrustworthiness to discharge the fiduciary duties of a mortgage loan originator. “[T]here is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice.” (*Golde v. Fox* (1979) 98 Cal. App.3d 167, 176.) Respondent’s knowing and willful misapplication of funds necessarily involves fraud, and fraud is a hallmark of dishonesty and a lack of integrity.

12. Competent, credible evidence admitted during the administrative hearing does not demonstrate respondent’s financial responsibility. Respondent eschewed his obligation to pay fees associated with a homeowners’ association. He incurred judgments and liens in amounts totaling over one-quarter million dollars. He sought avoidance of his financial responsibilities through bankruptcy. The evidence establishes respondent’s inability to operate honestly and fairly. Respondent lacks the financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that as a mortgage loan originator he will operate honestly, fairly, and efficiently within purposes of the California Financing Law and the California Residential Mortgage Lending Act. The commissioner therefore has the authority to deny respondent’s application for MLO licensure.

13. Cause does not exist pursuant to section 50512 of the California Residential Mortgage Lending Act for the Commissioner to deny respondent’s mortgage loan originator application. It is not established that respondent knowingly made untrue statements to the Commissioner during the course of licensing with the intent to impede, obstruct, or influence the administration or enforcement of the California Residential Mortgage Lending Act. (Factual Findings 2 and 4 and Legal Conclusions 5 and 6.)

14. Cause exists pursuant to section 22109.1 of the California Financing Law and section 50141 of the California Residential Mortgage Lending Act for the Commissioner to deny respondent’s mortgage loan originator application. Respondent has not demonstrated the financial responsibility, character, and general fitness that command the confidence of the community and warrant a determination that as a mortgage loan originator he will operate honestly, fairly, and efficiently within the purposes of the California Financing Law and the California Residential Mortgage Lending Act. (Factual Findings 2 and 4 and Legal Conclusions 9, 11 and 12.)

15. Cause exists pursuant to section 22109.1 of the California Financing Law and Section 50141 of the California Residential Mortgage Lending Act for the Commissioner to deny respondent’s mortgage loan originator application. Respondent pleaded guilty to a felony that involved an act of fraud, dishonesty or a breach of trust. (Factual Findings 2.c. and 4.b. and Legal Conclusions 10 and 11.)

DATED: January 17, 2019

  
JAN LYNN OWEN  
Commissioner  
Department of Business

