

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Amended Accusation Against:

MATTHEW R. HODLIN,

NMLS ID No. 339382

OAH No.: 2016110193

FINAL DECISION

Administrative Law Judge Roy W. Hewitt (ALJ), Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on March 17, 2017.

Counsel for the Department of Business Oversight, Lindsay B. Herrick, represented complainant, the Commissioner of Business Oversight.

William Winship, Jr., Esq., represented respondent, Matthew R. Hodlin. Respondent was present throughout the hearing.

Evidence was received at the hearing. No closing argument briefs were filed.

The matter was submitted for decision on March 17, 2017.

The Proposed Decision was issued by the ALJ on April 14, 2017. On July 25, 2017, all parties were served with an Order of Rejection in accordance with Government Code section 11517, subdivision (c)(2)(E). The Proposed Decision was rejected because the legal conclusion in the Proposed Decision was not supported by the evidence.

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 August 31, 2017.

Neither complainant nor respondent submitted any arguments.

FACTUAL FINDINGS

Jurisdiction

1. On September 22, 2010, the Commissioner of Business Oversight issued a mortgage loan originator (MLO) license to respondent.

2. On December 8, 2015, respondent filed an application with the Commissioner for renewal of his MLO license. Respondent filed his application with the Commissioner by filing a Form MU4 through the Nationwide Mortgage Licensing System & Registry (NMLS).

3. Respondent's MLO license was renewed on December 24, 2015. Subsequently, on October 19, 2016, the Commissioner filed an accusation against respondent seeking revocation of his MLO license and an order barring respondent from any position of employment, management or control of any business that participates in any business activity of a licensed residential mortgage lender and/or servicer, or MLO, and from any business activity on the premises where such lender, servicer or originator is conducting its business. The accusation was based on respondent's July 10, 2015, felony criminal conviction for violating 18 United States Code section 371 (conspiracy to commit wire fraud).

4. On December 31, 2016, respondent's MLO license expired and respondent failed to petition the Commissioner for reinstatement; accordingly, on March 8, 2017, the Commissioner issued an amended accusation. In the amended accusation, the Commissioner withdrew her notice of intention to revoke respondent's MLO license. The amended accusation seeks to bar respondent pursuant to Financial Code section 50318.

5. Respondent timely filed notices of defense and the instant proceeding ensued.

Respondent's July 10, 2015, Felony Conviction

6. On July 10, 2015, in the United States District Court, Southern District of California, case number 11CR3486-JAH, respondent, after entry of a guilty plea, was convicted of one count of violating 18 United States Code section 371 (conspiracy to commit wire fraud), a felony.

7. The facts and circumstances underlying respondent's conviction, as set forth in his criminal plea agreement, were as follows:

B. ELEMENTS UNDERSTOOD AND ADMITTED...

Defendant [respondent] has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of the crime¹ ... The following facts are true and undisputed:

¹ 18 United States Code section 371 provides, in part: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both."

In or about October and November 2006, Defendant agreed with coconspirators including Karen Brito and others to make material misrepresentations in the refinance mortgage loan applications for borrower [name omitted] in order to obtain fraudulent mortgage loans totaling \$342,000 for the borrower.

In furtherance of this agreement and to carry out its object, within the Southern District of California, on or about October 13, 2006, Brito and Defendant exchanged emails discussing whether Defendant had left the statement about the borrower's assets the same or whether he had 'pump[ed] them up' on the loan application. On or about the same date, Defendant instructed Brito not to list any assets for the borrower on the loan application.

Based at least in part on the above false statements, the fraudulent loan application was approved, and the loan was funded via interstate wire. After default and foreclosure, an estimated loss of approximately \$157,000 resulted from this transaction. (Exh. 14, DB000145 – DBO000146)

8. As a result of the conviction respondent was placed on five years of probation with house confinement; six months of monitoring using location monitoring technology; 30 days in a half-way house; 100 hours of community service; disclosure of personal and business financial records; prohibition from opening checking accounts, incurring new credit card charges or opening additional lines of credit without approval; and that he pay \$157,000 in restitution.

9. Respondent's felony conviction was for a crime directly and substantially related to the qualifications, functions and duties of a licensee.

Respondent's Explanation for his Conviction

10. Respondent testified that he was implicated with about 25 others in a fraudulent mortgage lending scheme by "responding to an email." According to respondent, on October 13, 2006, he received the following email from a representative at "Terra-Finance.com":

Question, did you leave the assets in the bank the same or did you pump them up? I currently have \$3400 in total assets listed in point. This approval is asking to have \$14,517.25 in assets verified. Please let me know.

Respondent answered: "Look at the part 'for cash from new or exi[s]ting home' the heloc cash is your reserves, don't list any assets on the 1003."

11. According to respondent, when he was charged with conspiracy to commit fraud, his attorney advised him to plead guilty to a plea negotiation that kept him from going to prison.

Character References

12. Five witnesses testified about respondent's character for straightforward "by the book" work, truthfulness, honesty, integrity and trustworthiness.

Analysis

13. Respondent's minimization of his role in the crime leading to his conviction was unavailing. He cannot use this forum to collaterally attack his criminal conviction and, his rendition of the facts underlying his conviction did not mitigate his culpability.²

LEGAL CONCLUSIONS

1. Financial Code section 50318 provides, in part:
 - (a) The commissioner may, after appropriate notice and opportunity for hearing by order ... bar from any position of employment, management, or control any ... person, if the commissioner finds either of the following:

[...]
 - (2) That the person (A) has been convicted of or pleaded nolo contendere to any crime, or (B) has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense specified in subdivision (b) of Section 50317, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this division.
2. Based on the Factual Findings set forth above, cause exists to issue a bar order against respondent pursuant to Financial Code section 50318(a)(2)(A).


² In administrative disciplinary proceedings, a licensee may not seek to impeach a prior criminal conviction by means of an "an inquiry into the circumstances surrounding the offense." On the other hand, the licensee "should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." Regardless of the motives which may have impelled the plea, the conviction based thereon stands as conclusive evidence of guilt of the offense charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

ORDER

Respondent Matthew R. Hodlin is barred from any position of employment, management, or control of any residential mortgage lender, residential mortgage servicer, or mortgage loan originator, and from any business activity on the premises where such lender, servicer or originator conducts its business.

This Decision shall become effective on December 22, 2017
Date

Dated: November ~~22~~, 2017



JAN LYNN OWEN
Commissioner
Department of Business Oversight