

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF BUSINESS
OVERSIGHT,

Complainant,

v.

DAVID LEE HARDIN, JR.,

Respondent.

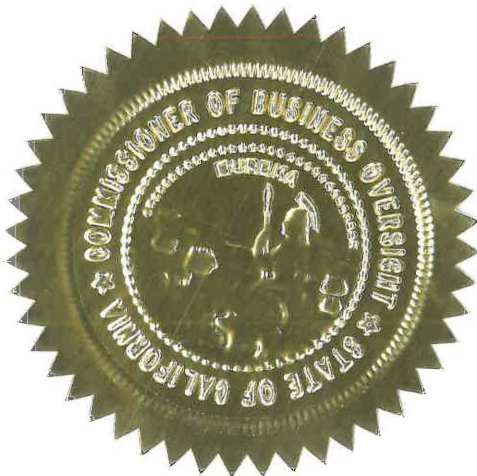
OAH No. 2019011027

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on July 20, 2019.

IT IS SO ORDERED this 21st day of June, 2019.



[Redacted Signature]

MANUEL P. ALVAREZ
Commissioner of Business Oversight

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PROPOSED DECISION

Administrative Law Judge Cindy F. Forman of the Office of Administrative Hearings heard this matter on February 19, 2019, in Los Angeles, California.

Danielle A. Stoumbos, Senior Counsel, Department of Business Oversight (Department), represented Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner).

Respondent David Lee Hardin, Jr. (respondent) represented himself.

FACTUAL FINDINGS

1. The Commissioner filed the Accusation in her official capacity seeking, pursuant to Financial Code section 22169, to bar respondent from any position of employment with, or management or control of, any finance lender, broker, mortgage loan originator, or program administrator, based on respondent's prior conviction for a crime involving dishonesty, fraud, or deceit.

2. On January 30, 2019, respondent filed a Notice of Defense. This hearing ensued.

3. At the administrative hearing, complainant and respondent submitted a Joint Stipulation of Facts (Joint Stipulation), in which they agreed to many of the facts pertinent to this proceeding. (Ex. 1.) The parties also stipulated to the authenticity, relevance, and admission of the exhibits accompanying the Joint Stipulation. (Joint Stipulation (JS) Exs. A – P.)

Respondent's Criminal Conviction

4. On July 3, 2013, in case number 8:13-cr-00019-JVS, in the United States District Court, Central District of California, Southern Division, the court convicted respondent, on his plea of guilty, of one count of mail fraud (18 U.S.C. § 1341), a felony. The court sentenced respondent to 41 months in federal prison, which is the low end of the applicable guidelines set forth in the United States Sentencing Guidelines (Sentencing Guidelines),¹ to be followed by two years of supervised probation with terms and conditions. (JS Ex. H.) One probation condition required respondent to obtain express written permission from his probation officer prior to accepting employment in any business involving loan programs. (*Id.* at p. 146.) The court also ordered respondent to pay \$1,504,700.30 in victim restitution.

5. Respondent served 30 months in federal prison at Taft Correctional Institution. On March 6, 2016, the Bureau of Prisons released respondent from prison six months early for good behavior, and respondent then spent six months in a halfway house. Respondent successfully completed his terms of probation, and he was released from court supervision in September 2018. (JS ¶¶ 17, 18, 24.)

6. Respondent has paid over \$35,000 in victim restitution to date. (JS ¶ 22.) Respondent still owes 26 investors approximately \$1,469,700 in restitution. (*Ibid.*) The amount and timing of respondent's restitution payments are dictated by the court; respondent is prohibited from paying his victims directly.

7. The facts and circumstances of respondent's crime are set forth in the Plea Agreement, filed with the court on March 6, 2013. (JS Ex. F.) The Plea Agreement states the following:

¹ According to the Plea Agreement entered into between respondent and the United States Attorney's Office for the Central District of California (USAO), the Sentencing Guidelines designates respondent's crime to have an offense level of 25, based on the underlying act, the amount at issue, and the number of victims, thereby warranting a prison term of between 57 and 71 months. (JS Ex. F, p. 67; U.S.S.G. Sentencing Table.) However, because of respondent's guilty plea, the USAO recommended a downward adjustment of respondent's offense to level 22, which allowed sentencing at the low end of the applicable Sentencing Guidelines range of 41 to 51 months. (*Id.* at p. 61.) The court agreed with the USAO recommendation.

From at least on or about April 27, 2007 to at least in or about December 2012, . . . [respondent] owned a majority interest in, and operated, HRE Mortgage, Inc., doing business as Covenant Mortgage, Covenant Debt Solutions, Inc., and Covenant Marketing Group, Inc. (collectively the "Business Entities"). The Business Entities provided mortgage and debt settlement services. From at least April 2007 through at least July 2010, [respondent] solicited investments in a note pool, a marketing pool, and the debt settlement business from various persons[.] The investments were structured as loans to the Business Entities.

[Respondent] told investors that the loan proceeds would be used for specific purposes relating to the Business Entities. In particular, [respondent] told investors that the funds would be used to finance a home building project, to originate mortgages and to fund the debt settlement business, which would generate profits through the sale of the home, the origination of mortgages and the fees from the debt settlement services. [Respondent] did not tell investors that their funds would be used for the Business Entities' operational costs or [respondent's] personal expenses.

In fact, a large percentage of the investor' funds were used for purposes other than those [respondent] had represented to the investors. A substantial portion of the investors' funds was used to fund the Business Entities' operational costs, including salaries of employees, advertising, and repayment of principal and/or interest on loans from earlier investors, who were falsely told that the payments came from the Business Entities profits. Some of the investors' funds were used for [respondent's] personal expenses, including rent and car payments. [Respondent] did not disclose to investors that their funds were being used in this manner, nor that the Business Entities were losing money in their business activities. Instead, investors received statements in the mail indicating that their investments were making a profit.

In total, [respondent] raised more than \$2,990,283 in loans from investors to the Business Entities. Of that amount, investors lost more than \$1.2 million.

On or about the following date, [respondent], for the purpose of executing and attempting to execute the above-described scheme to defraud, willfully caused the transmission, and aided

and abetted the transmission, of the following items, among others, by means of the U.S. mails in interstate and foreign commerce: May 14, 2008 mailing of a \$25,000 check from R. H. to one of the Business Entities.

(*Id.* at pp. 64-66.)

8. A. Respondent provided further explanation of his wrongdoing at the administrative hearing. Respondent started HRE Mortgage, Inc. and its related companies, including a debt servicing business and a mortgage loan business (collectively referred to as the Covenant companies), sometime after 2004. At about the same time, respondent personally purchased property to develop a “spec” house. After starting construction, respondent was unable to obtain loans from the banks to continue working on the house because of fallout from the financial crisis of 2007 and 2008. Rather than terminate the project, respondent sought investors to allow him to continue the construction. Respondent commingled the funds he obtained from investors in the spec house construction with the funds he had obtained from investors in the Covenant companies. Respondent then used those comingled funds, without first informing his investors and contrary to their intent, to pay the Covenant companies’ operational expenses, including employee salaries, to repay some of the investor loans, and to pay for his rent and car expenses.

B. Respondent testified he solicited the investments in the spec house and the Covenant companies in good faith with the intention of repaying his investors in a timely fashion and with interest. However, respondent’s payment of interest on the investors’ loans from the comingled funds omitted the funding source of that interest and misrepresented the profitability of the investments. The government filed charges after one of respondent’s investors sought immediate return of his investment funds, and respondent could not provide the funds.

9. Respondent did not involve anyone else in his wrongdoing, and complainant offered no evidence that anyone else was criminally charged in connection with the investment fraud.

10. Complainant made no allegation and offered no evidence that respondent misused any investor funds to support a lavish lifestyle or for extraordinary expenses.

Respondent’s Post-Prison Employment

11. After his release from prison, respondent was hired by Far West Industries (Far West), a closely-held California corporation engaged in homebuilding and real estate development that has been owned and operated by the Lissoy family since 1977. Far West builds approximately 130 homes per year. Scott Lissoy, president and co-owner of Far West, was personally responsible for respondent’s hiring. Mr. Lissoy has known respondent on a personal basis since 2000, was aware of respondent’s criminal conviction and prison sentence before hiring him, and respected respondent’s business expertise and background, which is described more fully in Factual Finding 18. Far West initially employed respondent

to work on small projects solely related to its construction business, and respondent performed his tasks well according to Mr. Lissoy, who testified at the administrative hearing on respondent's behalf. (See Factual Finding 27.)

12. After several months, respondent left Far West to work for a general contractor. When that contractor closed his business, respondent had further discussions with Mr. Lissoy about employment opportunities at Far West. Mr. Lissoy sought to utilize respondent's banking expertise and experience at one of his affiliated companies, GF Capital Group (GF Capital), a Nevada corporation sharing the same address as Far West. GF Capital is a California-licensed private lender providing short-term bridge real estate financing to landowners, developers and other corporate borrowers. GF Capital does not offer any consumer loans. GF Capital is funded entirely with monies from Mr. Lissoy's family, and its loans are secured by real estate in California. GF Capital has no employees; instead, GF Capital purchases services from Far West. As of the date of the administrative hearing, GF Capital's loan portfolio exceeded \$100 million. (J.S. ¶¶2, 5, Ex. I.)

13. Because respondent's probation terms prohibited respondent from employment in any lending business without the express permission of his probation officer, Mr. Lissoy wrote a letter, dated September 14, 2017, to respondent's probation officer seeking permission to hire respondent as a Commercial Account Manager for GF Capital. (JS Ex. I.) As Commercial Account Manager, respondent would be "responsible for the overall management, sales and growth of the commercial account finance portfolio, including the development, maintenance, and growth of said portfolio." (*Id.* at p. 154.) Mr. Lissoy notes in the letter that the proposed Commercial Account Manager position has no lending authority, no access to company funds, and would operate under Mr. Lissoy's direct supervision. Mr. Lissoy also points out that in-house attorneys prepare all GF Capital loan documents, and that respondent, as a Commercial Account Manager, would have no authority to negotiate, prepare, or approve any loan documents or terms. In addition, none of the duties of a Commercial Account Manager would require government licensure. According to Mr. Lissoy, respondent's job duties as a Commercial Account Manager would not put the public at risk.

14. Respondent's probation officer approved respondent taking the position of Commercial Account Manager for Far West. On September 25, 2017, Mr. Lissoy formally offered respondent the position, which respondent accepted on October 1, 2017. (JS ¶¶ 20, 21.) Respondent's monthly base rate salary as Commercial Account Manager was \$4,000 per month. In addition, Far West paid respondent a commission of .375 percent of the loan amount for new GF Capital client loans and .25 percent of the loan amount for new loans with existing or former GF Capital clients. For each commission, Far West paid respondent 75 percent when the loan funded and 25 percent when the loan was repaid. (JS Ex. J. at p. 161.)

15. Mr. Lissoy expressed his satisfaction with respondent's job performance as Commercial Account Manager in an August 24, 2018 letter to respondent's probation officer:

[Respondent] has proved to be a valuable team member. His work ethic is exemplary. He is often the first here in the morning and routinely works 10 to 11 hour days Monday through Friday each and every week in a full time position. The quality of his work has been equally outstanding. He is respected and well liked by his coworkers and is always putting the company first. He is quick to offer assistance whenever a need arises. He has been very open about his situation and they have all accepted him as a member of our "family."

(JS Ex. K.)

16. Respondent worked as a Commercial Account Manager for Far West without incident from October 1, 2017, until sometime in January 2019, when the Department sought to bar respondent from the lending industry. According to testimony by Eric Davies, Special Administrator of the Department, the Department acted after receipt of a notice from the Department of Insurance alerting the Department to respondent's criminal conviction. Respondent never held a license issued by the Department of Insurance, but his identity and criminal history became known to the Department of Insurance in an unrelated matter.

Other Evidence

17. Respondent is 64 years old. He has been married 45 years, and he has five children and 17 grandchildren. He has no desire to start or own a business at this stage of his life.

18. Prior to starting the Covenant companies, respondent had been employed in the banking industry for more than 20 years and was a recognized and well-respected leader in the industry. He worked in various executive capacities at World Savings & Loan, Columbia Savings and Loan, Valley Federal Savings and Loan (Valley Federal Savings), and Hawthorne Savings and Loan (Hawthorne Savings). As a banker, respondent was dedicated to serving his community. Respondent was credited with creating several successful lending units at Hawthorne Savings, and he helped to establish mobile banking units in underserved communities. Respondent was regularly featured on KFI AM radio, answering questions about mortgage problems. Although banks and the mortgage industry are highly regulated and subject to scrutiny by a wide variety of government organizations, neither respondent nor any banking department he supervised was ever found to be in violation of any banking rules or regulations.

19. Prior to his criminal conviction, respondent held a California real estate broker license that had not been subject to any discipline. Subsequent to his criminal conviction, the Department of Real Estate revoked respondent's license while respondent was serving his prison sentence. Respondent has not sought to renew his real estate broker license.

20. Respondent has taken full responsibility for his crime. He has admitted his wrongdoing to the employees of the Covenant companies, to the congregation of his church,

and to the employees of Far West. When the government started its investigation, he openly shared what was going on with his friends, colleagues, and investors.

21. Respondent acknowledged that his actions not only financially harmed his investors, but that they also damaged his relationships with his family and friends as well as his own reputation. Respondent has undertaken the self-reflection necessary to understand why and how he committed the wrongdoing. Although the mortgage and loan business was quite volatile owing to the 2007 financial crisis, respondent did not use that volatility as an excuse for his misconduct. He asserted that his wrongdoing was the result of his hubris and bad judgment.

22. The financial losses borne by respondent's investors still weigh heavily on respondent, and he is committed to making full restitution. Respondent testified that he stopped accepting investor money in 2008 after recognizing the difficulties he faced repaying existing investors. However, instead of declaring bankruptcy, which would have cut off any opportunity of his investors to recoup their investments, respondent allowed his family home to go into foreclosure, sold personal property, and took a second job in San Francisco at Bay Equity, all as part of his efforts to repay his investors. Through his efforts, respondent was able to repay \$1.4 million of the \$2.9 million dollars invested. Several letters submitted to the court in connection with respondent's sentencing confirmed respondent's efforts. (JS Ex. G, pp. 102-103, 106, 110, 113, 114.)

23. While in prison, respondent took significant steps toward rehabilitation. He taught a class to fellow prisoners on self-reflection, and he obtained an Associate of Arts degree in chaplaincy. Respondent also wrote letters to at least 50 of his family members, friends, and colleagues discussing the life lessons he had learned from his wrongdoing.

24. Respondent currently volunteers as a guest lecturer in business ethics classes at the Chapman University Argyros School of Business and Economics. Thus far, he has given at least nine lectures to audiences consisting of 45 to 50 students. His lectures discuss his wrongdoing and the mistakes he made. Respondent points out to the students how his pride, embarrassment over his losses, and his belief that he could never fail (based on his earlier record of repeated success) clouded his judgment and led him to believe he could earn his way out of his financial problems instead of facing them head-on. The professor for the classes characterized respondent as an "outstanding lecturer" who impresses students with his story of how "overwhelming pressures and a desire to do the right thin[g] might still lead a smart, faithful, honest individual to do the wrong thing – and pay the price for his choices!" (JS Exs. L, M.)

25. Respondent presented as sincere and forthright. He expressed remorse for his actions at the hearing. He admitted he made a "horrific mistake." While respondent acknowledged that he had only been free of court supervision for less than a year, he asserted that his rehabilitation has been qualitative. Respondent also pointed out that he had attempted to make amends to his investors well before he pleaded guilty and that he has been open and candid with everyone about his wrongdoing. Respondent has maintained a strong

support network of family, friends, and colleagues. Respondent would like to continue to work at Far West to earn money to support his family and to continue to meet his restitution obligations.

26. Included in the record are 54 letters from family, friends and business associates submitted to the federal court to vouch for respondent's character and to request leniency for respondent. (JS Ex. G.) The letters underscore respondent's dedication and generosity to his family, his church, and his community. They also address respondent's integrity in business as well as in his personal life. The letters reveal the respect respondent has earned from his employees and business colleagues, despite his criminal conviction. The letters also reflect a collective belief that respondent's wrongdoing was an aberration and a mistake; none of the authors of the letters attributes respondent's actions to greed or bad faith.

27. A. In addition to the letter Mr. Lissoy provided to the court, Mr. Lissoy testified at length at the administrative hearing on respondent's behalf. Mr. Lissoy expanded on his opinion as to why he believes respondent was not a threat to the public in his position as Far West's Commercial Account Manager.

B. Mr. Lissoy is a leader in the construction and lending industries as president and owner of Far West. In addition, he is a California-licensed real estate broker and contractor. In the 40 years in which Far West has been in business, neither Mr. Lissoy nor any Far West employee has suffered any license discipline, and both Mr. Lissoy and Far West have earned several awards over the years, including Orange County Business of the Year. Mr. Lissoy considers himself a hands-on manager, and he is extremely involved in his lending business.

C. According to Mr. Lissoy, the position of Commercial Account Manager is primarily a "telephone job." As Commercial Account Manager, respondent was tasked with making and maintaining relationships with potential and existing GF Capital customers who contact GF Capital through its company website and Google advertisements. GF Capital does not make cold calls to potential borrowers. Respondent did not have approval authority for any loans made by GF Capital, did not negotiate the terms of any GF Capital loans, had no access to the money funding such loans, and had no authority to execute any bank wires transferring GF Capital funds. In his position as Commercial Account Manager, respondent reported directly to Mr. Lissoy, whose office was near to respondent's office. No Far West employee reported directly to respondent, and respondent did not supervise any Far West employee. Neither Far West nor GF Capital suffered any losses or detected any financial irregularities in connection with respondent's work as a Commercial Account Manager.

D. Mr. Lissoy vouched for respondent's character. Mr. Lissoy would not have hired respondent and put the reputation of his entire company at risk if he did not believe in respondent's integrity and trustworthiness. Mr. Lissoy believes that respondent, despite an "illustrious" banking career, made mistakes because he was not accustomed to running his own business. According to Mr. Lissoy, respondent had tried to do the right

thing but had been caught by a hostile financial environment. Mr. Lissoy considers respondent to be a good man with great banking knowledge and deserving of a second chance. Mr. Lissoy noted that respondent is well respected and well liked by his fellow employees at Far West. Mr. Lissoy does not believe respondent presents a danger to the public, and would rehire respondent as a Commercial Account Manager if the Department permitted him to do so.

28. A. Timothy Chrisman also testified on respondent's behalf. Mr. Chrisman has been in the banking business for 30 years. He has served on the board of directors and as an officer of several banks including Valley Federal Savings and Hawthorne Savings, where he worked with respondent. During the banking crisis, Mr. Chrisman worked to improve distressed banks, which included Hawthorne Savings. Mr. Chrisman also served for 10 years as Chairman of the Federal Home Loan Bank of San Francisco and Chairman of the Council of Federal Home Loan Banks, the system's national trade organization

B. Mr. Chrisman has known respondent since the late 1980's through his work for Valley Federal Savings. Notably, Mr. Chrisman was one of the investors in respondent's companies who lost money, and he has thus far been repaid \$1,800 of the \$100,000 he invested with respondent.

C. Mr. Chrisman testified about his observations of respondent's work in the banking industry. Mr. Chrisman hired respondent to work at Hawthorne Savings when the bank was failing. While working at Hawthorne Savings, respondent successfully managed and grew the consumer and residential lending divisions. Respondent was viewed as the "fiber" of the bank; respondent always had the best interests of the bank and the community at heart. Because Hawthorne Savings was considered distressed by the regulatory authorities, the bank was audited multiple times by the government. At no time was there any concern expressed by the government regulators about respondent, his actions, or his departments. According to Mr. Chapman, respondent was instrumental in Hawthorne Savings' ultimate success. Mr. Chrisman attributed the bank's positive reputation for community outreach and public service to respondent's efforts.

D. Mr. Chrisman also lauded respondent's professionalism, ethics, and dedication. Mr. Chrisman noted that respondent was a "class act" who "screwed up." According to Mr. Chrisman, respondent was trapped in a bad situation, and his misconduct was not self-serving. Despite his loss, Mr. Chrisman testified he would invest with respondent again "in a second" because he is confident that respondent would take responsibility for his actions and would not put his investors in an embarrassing situation. Respondent was open and honest about his mistakes with Mr. Chrisman, and respondent told him about the FBI investigation soon after its start. Mr. Chrisman believes respondent's work at Far West will not endanger the public, particularly in light of the nature of his position and the highly regulated nature of the lending business.

29. Both Mr. Lissoy and Mr. Chrisman offered convincing and credible testimony. Both have been in positions to judge respondent's moral character and trustworthiness. "In

reaching a fair conclusion on the question of reformation . . . the favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living . . . should weigh heavily in the scale of justice.” (*In re Andreani* (1939) 14 Cal.2d 736, 749–50; see also *Feinstein v. State Bar of Cal.* (1952) 39 Cal.2d 541, 547 [“Letters of recommendation and the favorable testimony of witnesses, especially that of employers . . ., are entitled to considerable weight.”].)

LEGAL CONCLUSIONS

1. Except as otherwise provided by law, a party has the burden of proving by a preponderance of the evidence each fact the existence or non-existence of which is essential to the claim for relief or defense that he or she is asserting. (Evid. Code, §§ 115, 500.) In this case, the Department has the burden of proving by a preponderance of the evidence the propriety of an order issued pursuant to Financial Code section 22169 barring respondent from any position of employment with, or management or control of, any finance lender, broker, or program administrator.

2. Financial Code section 22169 provides in pertinent part:

The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or bar a person, including a mortgage loan originator, from any position of employment with, or management or control of, any finance lender, broker, program administrator, or any other person, if the commissioner finds either of the following: [¶] . . . [¶]

(2) That the person has been convicted of or pleaded nolo contendere to any crime, or 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 involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, function, or duties of a person engaged in the business in accordance with the provisions of this division.

3. The language of Financial Code 22169 is permissive; the Commissioner may, but is not required, to censure, suspend or bar an individual from employment in the finance lending industry if the individual has been convicted of a crime involving dishonesty, fraud, or deceit. (*Cannizzo v. Guarantee Ins. Co.* (1966) 245 Cal.App.2d 70, 73 [“Well-recognized rules of statutory construction establish that while the word ‘shall’ connotes Mandatory action, the word ‘may’ indicated Permissiveness (§ 14, Gov. Code; *National Automobile etc. Co. v. Garrison*, 76 Cal.App.2d 415, 173 P.2d 67).”].)

4. The Commissioner established by a preponderance of evidence that cause exists to bar respondent from any position of employment with, or management or control of, any finance lender, broker, or program administrator, pursuant to Financial Code section 22169, because respondent was convicted of mail fraud, a crime involving dishonesty, fraud, or deceit, as set forth in Factual Findings 4 through 8.

5. The authority of the Commissioner to bar respondent from employment in the finance lending industry is derived from the police powers granted to the executive branch of government to act to protect the public interest. (See *People ex rel. Deukmejian v. Brown* (1981) 29 Cal.3d 150, 158 [the executive branch “determine[s] the public interest”].) Thus, it is incumbent upon the Department to determine the nature of the risk, if any, to the public posed by respondent before barring him entirely from employment by or management or control of any business in the finance lending industry.

6. It has long been recognized that people can and do reform, and that in such circumstances they should not be barred from employment. (See *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 404.) Although respondent was released from court supervision less than a year ago, respondent has made a sufficiently strong showing of his rehabilitation, as set forth in Factual Findings 15 and 17 through 29, such that it would be consistent with the public interest to permit him to work in the finance lending industry under supervision. (See *In re Bodell* (Cal. Bar Ct., Nov. 22, 2002, No. 99-R-12244) 2002 WL 31654998, at *3 [“Our concern, however, is not just in counting the correct number of years for measuring petitioner’s rehabilitation; but more importantly, to assess the quality of petitioner’s showing in light of his very serious misconduct surrounding his conviction of a crime involving moral turpitude.”]; *In re Gossage* (2000) 23 Cal.4th 1080, 1096 [“the more serious the misconduct and the bad character evidence, the stronger the . . . showing of rehabilitation must be”].) Respondent has acknowledged unequivocally the seriousness of his wrongdoing, expressed remorse, and described how his poor judgment and misplaced hubris led him astray. He is determined not to repeat his past mistakes. Respondent is also committed to making his investors whole. (See *In re Andreani, supra*, 14 Cal.2d at p. 750 [acts of restitution judged by “spirit of willingness, earnestness and sincerity”].) In addition, respondent has gained the respect and confidence of those with whom he has worked, and reputable members of the lending industry, including one who lost money investing in respondent’s businesses, have advocated for respondent to be able to resume work in the lending business.

7. The law favors regeneration. (*Resner v. State Bar of Cal.* (1967) 67 Cal.2d 799, 811.) Respondent’s conduct resulting in a mail fraud conviction was an isolated and aberrant act. Such conduct is unlikely to recur given respondent’s rehabilitation and the personal and reputational losses he sustained because of his poor judgment and hubris. Far West has indicated it will re-hire respondent if permitted to do so by the Department, and respondent would like to resume employment with Far West so that he can support his family and repay his investors.

8. The Department has not provided any regulations or guidelines under which an individual subject to a bar order who has evidenced strong rehabilitation may be placed on probation. However, the California Administrative Procedure Act (Gov. Code, § 11400, et seq.) provides government agencies discretion to modify the discipline or penalty they initially impose. Specifically, Government Code section 11519, subdivision (b), allows an agency to stay the execution of the discipline imposed and require the respondent to “comply with specified terms of probation” that are “just and reasonable in light of the findings and decision.” (See also Gov. Code, §§ 11503 [allowing right or privilege to be “suspended, limited, or conditioned”]; 11517, subd. (c)(2)(B) [allowing an agency to reduce or otherwise mitigate remedy set forth in a proposed decision].)

9. The findings in this matter warrant staying the Commissioner’s bar order and requiring respondent to comply with specific terms of probation to ensure that his employers are aware of his past criminal conduct, he is properly supervised, and his contact with consumers and the handling of loan funds is limited. Accordingly, under the authority of Government Code section 11519, subdivision (b), the Order below subjecting respondent to probation for three years will serve public protection as respondent continues his rehabilitation.

ORDER

Respondent shall be barred from any position of employment with, or management or control of, any finance lender, broker, or program administrator pursuant to Financial Code section 22169. However, the bar is immediately stayed for a period of three years, during which respondent is subject to the following specified terms of probation:

1. Respondent shall obey all laws and regulations of the State of California, the United States of America, and every state and foreign government (and political subdivision thereof) having jurisdiction over respondent.

2. Respondent shall report to the Commissioner of Business Oversight within 30 days any disciplinary investigations or actions against respondent by any professional, occupational, or vocational licensing agencies, any criminal investigations, prosecutions, or convictions against respondent, or any civil judgments against respondent. Traffic citations are excluded.

3. Respondent shall submit, within 30 days of employment by a finance lender, broker, or program administrator a statement signed by his supervisor certifying that the supervisor has read this Decision and will exercise close supervision over respondent’s performance. This applies to all of respondent’s employers during the three-year period after the effective date of this Decision.

4. Respondent shall submit a written report to the Commissioner of Business Oversight within thirty (30) days of any change in employment status while working for any finance lender, broker, or program administrator.

5. During the term of this probation, respondent shall not (1) engage in consumer lending or work in any business engaged in consumer lending; or (2) handle any loan funds or proceeds.

6. If respondent violates the terms of this Order or otherwise violates the Financial Code or its regulations, the Commissioner may, after notice to respondent and an opportunity to be heard, vacate and set aside the stay order and re-impose the bar issued pursuant to Financial Code section 22169. Should no such determination be made, the stay imposed herein shall become permanent.

7. Upon successful completion of the three-year probationary period, respondent may apply to the Commissioner for removal of any bar from any position of employment with, or management or control of, any finance lender, broker, or program administrator as set forth in Financial Code section 22169.

DATED: March 13, 2019


CINDY F. FORMAN
Administrative Law Judge
Office of Administrative Hearings