

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Statement of Issues and
First Supplemental Statement of Issues
Against:

NMLS No. 1374025

OAH No. 2018020472

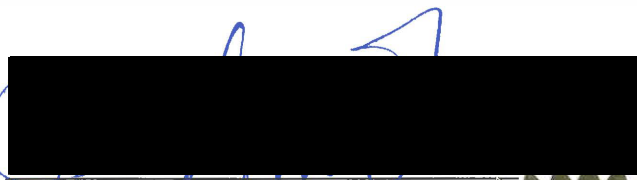
TODD JOSEPH KREJCI,
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated January 11, 2019, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on May 23, 2019.

IT IS SO ORDERED this 3rd day of April, 2019.


JAN LYNN OWEN
Commissioner of Business Oversight



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PROPOSED DECISION

Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on May 17 and October 5, 2018, in Los Angeles, California.

Alex M. Calero, Senior Counsel, and Kelly Suk, Counsel, Department of Business Oversight (Department), represented complainant Jan Lynn Owen, Commissioner of Business Oversight (Commissioner).

Respondent Todd Joseph Krejci (Respondent) represented himself at hearing on May 17, 2018. On October 25, 2018, Respondent was present at hearing and was represented by David B. Epstein and Elisabeth A. Turner, Attorneys, Law Offices of David B. Epstein PC.

Oral and documentary evidence was received on May 17, 2018 and the ALJ granted complainant's motion to amend the Statement of Issues to conform to proof at hearing. At the conclusion of the hearing on May 17, 2018, the ALJ continued the matter for a second date of hearing to October 5, 2018, to allow Respondent to address allegations not included in the Statement Of Issues In Support Of Non-Issuance Of Mortgage Loan Originator License. On August 13, 2018, the First Supplemental Statement Of Issues In Support Of Notice Of Intention To Issue Order Denying Mortgage Loan Originator License Application was filed by the Commissioner.

Oral and documentary evidence was then received at the second hearing date on October 5, 2018. The ALJ, with agreement of the parties, left the record open for submission of written closing briefs and legal briefing regarding the issue of 11 United States Code section 525, subdivision (a), by no later than November 6, 2018. On October 30, 2018, the parties filed a joint motion to extend the submission deadline. By order dated October 31, 2018, the ALJ granted the parties' motion and the record was left open until December 14,

2018. On December 14, 2018, the parties filed their legal and closing briefs, respectively marked as Exhibits 31 and L.

The matter was submitted for decision on December 14, 2018.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On January 11, 2017, Respondent filed an application for a Mortgage Loan Originator License¹ (MLO application) with the Commissioner under the California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA), pursuant to Financial Code section 50140. Respondent submitted the application by filing a Form MU4 with the Nationwide Mortgage Licensing System (NMLS) on the internet.

2. Respondent disclosed on the application that: he had filed a personal bankruptcy petition or been subject of an involuntary bankruptcy petition; he had been the subject of a foreclosure action; he had been found to have been involved in a violation of a financial services-related business regulation(s) and statute(s) by a state or federal regulatory authority or self-regulatory organization (SRO); he had an order entered against him in connection with a financial services-related activity by a state or federal regulatory authority or SRO; he had his registration or license revoked by a state or federal regulatory authority or SRO; a state or federal regulatory authority or SRO had denied or suspended his registration or license or application for licensure, disciplined him, or otherwise by order, prevented him from associating with a financial services-related business or restricted his activities; he had been barred from association with an entity regulated by such commissions, authority, agency, or office or from engaging in a financial services-related business by a state or federal regulatory authority or SRO; a state or federal regulatory authority or SRO had issued a final order against him based on violations of any law or regulations that prohibit fraudulent, manipulative, or deceptive conduct; a state or federal regulatory authority or SRO had entered an order concerning him in connection with any license or registration; he had been named as a respondent/defendant in a financial services-related consumer-initiated arbitration or civil litigation which resulted in an arbitration award or civil judgment against him or required corrective action; and he had been named as a respondent/defendant in a financial service-related consumer-initiated arbitration or civil litigation which was settled for any amount.

3. On February 9, 2018, the Commissioner filed a Statement of Issues and Notice of Intention to Deny Application for Mortgage Loan Originator License (SOI), alleging as

¹ A mortgage loan originator is “an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.” (Fin. Code, § 50003.5, subd. (a).)

grounds for denial that Respondent: (1) was the subject of a regulatory action by the National Futures Association (NFA) for misleading clients, resulting in Respondent being barred from the commodities industry for three years and ordered to pay a fine of \$25,000 if he later applies for a license from NFA; (2) filed for bankruptcy in 2009, 2012, and 2013; and (3) was the subject of a foreclosure proceeding, thereby demonstrating that Respondent's "failure to show the requisite financial responsibility, character, and general fitness and to warrant a determination that [Respondent] will operate honestly and fairly as a mortgage loan originator." (Ex. 1, p. 2.)²

4. Respondent submitted a Notice of Defense and requested a hearing.

5. During Respondent's May 17, 2018 hearing testimony, he provided additional information regarding his background. As a result, the SOI was amended to conform to proof at hearing. On August 13, 2018, the Commissioner filed a First Supplemental Statement Of Issues In Support Of Notice Of Intention To Issue Order Denying Mortgage Loan Originator License Application (SSOI). As further bases to deny Respondent's application, the SSOI include the allegations that Respondent had: (1) failed to disclose in his application that he was employed as an account executive by 20 20 Precious Metals; (2) made false statements to the California Department of Insurance (CDI) relating to his discharge of a firearm; and, (3) failed to disclose on his application that he was issued a restricted license by the CDI.

6. In sum, the Commissioner seeks to deny Respondent's MLO application based on two statutory grounds: (1) Respondent failed to demonstrate the minimum threshold licensure requirements; and (2) Respondent withheld information in his MLO application. The Commissioner argues that either one of the two grounds are independently sufficient to deny respondent's MLO application. Respondent, in turn, accuses the Department of bias in focusing on and emphasizing past and immaterial occurrences in Respondent's life, arguing that his recent two-year positive performance as an MLO supports his argument that he is entitled to licensure.

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² Based on confusion related to Respondent's affirmative response to Questions P (2) and (3) on his MLO application (relating to consumer-initiated arbitration or civil judgment), the Commissioner also reserved its right to amend the statement of issues to add additional facts as a basis for the denial of Respondent's MLO application. At hearing, however, no evidence was presented related to a consumer-initiated arbitration or civil judgment as a basis to deny Respondent's MLO application. As a result, the Commissioner did not amend the statement of issues on this point.

Respondent's Application

A. Bankruptcies

7. a. Form MU4 at Question (A)(1) asked: "Have you filed a personal bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past 10 years?" Respondent answered, "Yes."

b. Respondent disclosed that he filed for bankruptcy three times under various chapters of the United States Bankruptcy Code: Once under chapter 7 on October 30, 2009; once under chapter 13 on December 20, 2012; and again under chapter 13 on February 19, 2013. Respondent testified at hearing that the two chapter 13 bankruptcy petitions were dismissed by the court because Respondent failed to file the required paperwork with the court. Respondent further testified that he did not intend to proceed with the two chapter 13 bankruptcies when he filed the petitions. Respondent's main purpose in filing the two chapter 13 bankruptcies was to delay a trustee sale of his home.

c. Respondent explained his bankruptcies were the result of severe loss of income brought on by the 2008 financial crisis. He argued that the multiple bankruptcies should not be considered as a basis to deny his MLO application, because they occurred between five and nine years ago and bear no relevance to his qualifications as an MLO.

d. Respondent's arguments are unconvincing. The bankruptcies, together with his home foreclosure, set forth in factual finding 8 below, cast doubt on Respondent's personal financial responsibility. Further, Respondent's actions in filing bankruptcies for the purpose of delaying a trustee sale without intending to meaningfully engage in the chapter 13 proceedings undermine Respondent's assertions that he possesses the character and general fitness to serve as an MLO.

B. Foreclosure

8. a. Form MU4 at Question (A)(3) asked: "Have you been the subject of a foreclosure action within the past 10 years?" Respondent answered, "Yes."

b. Respondent explained that his 2013 foreclosure resulted from the 2008 financial crisis, his loss of employment, and his inability to come to terms with his lender after filing for bankruptcy.

C. Regulatory Action by the NFA

9. a. Form MU4 at Questions (K)(2), (4)-(9) asked:

"Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever:

“[¶] . . . [¶]

“(2) found you to have been involved in a violation of a financial services-related business regulation(s) or statute(s)?

“[¶] . . . [¶]

“(4) entered an order against you in connection with a financial services-related activity?

“(5) revoked your registration or license?

“(6) denied or suspended your registration or license or application for licensure, disciplined you, or otherwise by order, prevented you from associating with a financial services-related business or restricted your activities?

“(7) barred you from association with an entity regulated by such commissions, authority, agency, or office or from engaging in a financial services-related business?”

“(8) issued a final order against you based on violations of any law or regulations that prohibit fraudulent, manipulative, or deceptive conduct?

“(9) entered an order concerning you in connection with any license or registration?”

Respondent answered “Yes” to all of above-listed questions.

b. In the explanation portion of his MLO application, Respondent disclosed that in 2011 he was the subject of a regulatory action by the NFA. Respondent initially uploaded incomplete documents as part of his MLO application regarding the NFA action against him. After the Department requested a complete set of documents, Respondent complied. Among other allegations, the NFA complaint states: “CAM’s and [Respondent’s] sales solicitations were also deficient in that they contained misleading statements which exaggerated profit potential, downplayed risk of loss, and failed to disclose the impact of commission on the profitability of customers’ accounts.” (Ex. 11, p. 51, ¶29.) In 2012, as part of a settlement, the NFA issued a decision finding that Respondent violated NFA Compliance Rule 2-(2)(a) and Rule 2-29(a)(1) “by making deficient sales solicitations to customers.” (Ex. 18, p. 157.) Based on the violations, Respondent was barred from NFA membership for three years. (*Id.* at p. 158.) In addition, if Respondent reapplied for NFA membership, then “the facts and violations alleged in the Complaint in this case shall be deemed admitted [by Respondent].” (*Id.*)

c. At hearing, Respondent denied any culpability associated with the NFA regulatory action, arguing that the settlement was contradictory on its face. By way of explanation, Respondent argued, essentially, that he had been misled when he entered into the settlement with NFA without the benefit of counsel. Respondent argued that the

settlement should not be used against him as an admission of liability by the Department, because he had entered into settlement with the NFA “without admitting or denying the allegations of the Complaint.” (Exhibit 18, pp.157-158.) Respondent’s characterization of the NFA regulatory action against him misses the point. The fact that Respondent disputes the NFA’s findings and explains that he entered into the settlement because he did not have the resources to defend himself against the NFA charges goes to explain why he agreed to enter into the settlement. His argument does not negate the NFA’s findings of violations by Respondent. It is unequivocally clear from the terms of the settlement that NFA found violations by Respondent.

d. Part of an MLO’s role is to negotiate the terms of a loan with consumers. The fact that the NFA found that Respondent made deficient solicitations to customers negatively affects Respondent’s character and general fitness to negotiate loans with consumers.

D. Failure to Disclose Restricted License Issued by the CDI

10. a. Although Respondent made an affirmative disclosure on his Form MU4 at question K(6), Respondent did not disclose that CDI had issued him a restricted license. Respondent’s only written disclosure on Form MU4, regarding question K(6), was the NFA action. In fact, Respondent made no mention of his restricted CDI license anywhere on his MLO Application as requested by the plain language of the application. Respondent attested and submitted his MLO Application on January 11, 2017. At hearing, Respondent admitted that he knew in May 2016, seven months prior to the submittal of his application, that CDI had issued him a restricted license.

b. At the May 17, 2018 hearing in this matter, Respondent admitted that he did not disclose his restricted license on his MLO Application, explaining that his failure to disclose in the Form MU4 was an honest mistake, and not malicious. Subsequently, however, at the October 5, 2018 hearing in this matter, Respondent testified he did disclose his restricted insurance license by answering “Yes” to question K(6). He admitted, however, that he failed to provide a written disclosure of the restricted license in his Form MU4. In his closing argument, Respondent argued that he voluntarily disclosed his restricted insurance license even though it is not clear the Form MU4 required such information. He asserted that the failure to disclose the restricted license was an “irrelevant technicality” that the Department was using to deny Respondent an MLO license.

c. Respondent’s testimony and argument regarding his restricted insurance license is contradictory and not convincing. There is no ambiguity in question K(6), Form MU4, as it clearly asks about “restricted” activities. The burden is on Respondent, not on the Department, to answer the questions in his MLO Application in a forthright and straightforward manner. The fact that Respondent subsequently submitted evidence of the restricted license at hearing does not negate the fact that he willfully and knowingly failed to disclose his restricted insurance license on his MLO Application.

E. Failure to Disclose Employment with 20 20 Precious Metals

11. a. In his March 9, 2015 insurance license application, Respondent disclosed that his employer from February 1, 2010 to April 25, 2011, was 20 20 Precious Metals, where his position was account executive. The application for an insurance license uses the term "Employer." (Ex. 26, p. 279.) Respondent was named as a defendant in a civil action by the federal Commodities Future Trading Commission (CFTC) based on his involvement with 20 20 Precious Metals, which was later dismissed.

b. Unlike on his insurance license application, Respondent failed to disclose 20 20 Precious Metals as an employer on his MLO Application. The MLO Application, however, like the insurance license application, also uses the term "Employer." Respondent submitted his MLO Application in 2017, two years after submitting his insurance license application.

c. At the October 5, 2018 hearing in this matter, Respondent justified his failure to disclose 20 20 Precious Metals as an employer on his MLO Application by testifying that 20 20 Precious Metals was not a full-time employer and that he did not "really" get paid. He further testified, "I didn't put it on my MU4 because I, honest to gosh, just wanted to move on with my life." Respondent explained his rationale for not disclosing 20 20 Precious Metals on his MLO Application was that, in 2015, when Respondent completed his insurance license application, Respondent assumed CDI would investigate and were going to discover his involvement with 20 20 Precious Metals because an internet search of his name resulted in information of the investigation. However, in 2017, when Respondent completed his MLO Application, he had spent the previous approximately two years learning about internet search engine optimization so that the negative information about 20 20 Precious Metals and the CFTC would not as readily appear when Respondent's name was searched on the internet. Accordingly, Respondent rationalized his failure to disclose 20 20 Precious Metals as an employer on his MLO Application because it was not full-time paid employment and information about his involvement was not as readily available in an internet search in 2017 as it was in 2015 when he disclosed the employer to the CDI. Respondent's explanation demonstrates that he willfully failed to disclose his employment with 20 20 Precious Metals.

F. False Statement to CDI Regarding Discharge of Firearm

12. The Commissioner alleged that Respondent provided false statements to the CDI regarding his 1991 discharge of a firearm when he wrote in his June 9, 2015 letter to the CDI that the basis for his firing his firearm was because he wanted to hear it fire. At the October 5, 2018 hearing in this matter, Respondent added an additional basis for the discharge of the firearm; that he was defending his wife from a neighbor who was making racial slurs. Respondent further testified that he forgot why he fired the gun because the event had occurred over 27 years ago. While Respondent's varying reasons at different times demonstrate a lack of attention to detail, the weight of the evidence does not support a

finding that Respondent's statements were false, as alleged. Respondent could have reasonably had more than one reason for discharging the firearm.

Rehabilitation

13. a. Respondent argued that the Department was biased and was denying his right to earn a living in California by making up its mind to deny him a license without considering the full record. Specifically, Respondent pointed to the fact that his past two years of satisfactory performance as a mortgage loan originator while employed at LoanDepot support the granting of his MLO Application. Respondent is licensed in Alabama, Arizona, Arkansas, Indiana, Michigan, Ohio, Pennsylvania, Virginia, and Washington with no public record of discipline. He is also the holder of a California real estate salesperson license, which was issued by the Department of Real Estate in a non-working status and under which he may not perform licensed activities. (Ex. A.) Respondent asserted that he has originated between 200 and 235 loans in the nearly two years since he began working at LoanDepot in 2017. According to Respondent, these loans have been closed without any substantive complaint or wrongdoing. Respondent points to the positive feedback he receives from supervisors and customers as evidence of his qualification for licensure.

b. Both Daniel Iskander, LoanDepot Vice President, and Ben Kelly, Respondent's LoanDepot supervisor, testified in support of Respondent's licensure. Mr. Iskander testified, among other things, that he has never received a negative report regarding Respondent. Both witnesses rank Respondent highly in terms of responsibility, character, and fitness. The Department's argument that the witnesses' testimony should be viewed with mistrust because they have a financial motive to ensure Respondent's licensure is not convincing; both witnesses were credible at hearing.

c. Customer reviews submitted by Respondent also corroborate his testimony that he receives positive feedback from his mortgage loan originator work on behalf of LoanDepot.

Respondent's Character and General Fitness

14. While Respondent's positive job performance at LoanDepot is commended, it does not provide sufficient evidence that Respondent warrants licensure. Respondent's assertions of Department bias are groundless. Aside from his past financial issues, Respondent created serious concerns about his ability to function as an honest mortgage loan originator by his failure to be forthcoming with the Department during the licensure process. In his eagerness to become licensed as a mortgage loan originator, Respondent provided half-truths, inconsistent explanations, and generally refused to take any meaningful responsibility for his past financial and regulatory issues.

15. Specifically, in submitting his application and subsequent amendments, Respondent signed the MLO Application attesting, under penalty of perjury, that the answers

were “current, true, accurate and complete [.]” (Ex. 11.) By failing to disclose his restricted CDI license in response to Question (K) and failing to disclose his employment with 20 20 Precious Metals, Respondent made material misrepresentations to the Commissioner.

16. Respondent failed to disclose his restricted insurance license and 20 20 Precious Metal employment (Factual Findings 10 and 11). These misrepresentations cast doubt on Respondent’s character and general fitness to command the confidence of the community and operate honestly and fairly as a mortgage loan originator, as described in Financial Code section 50140, subdivision (a)(3).

17. Based on the totality of the circumstances including, but not limited to, Respondent’s tendency to justify half-truths; propensity to view himself as a victim, rather than the architect of his past financial issues; and failure to exhibit forthcoming honesty, Respondent did not establish through a preponderance of the evidence that he warranted Department licensure.

LEGAL CONCLUSIONS

1. Respondent bears the burden of proving that he meets all of the prerequisites for the requested license. (See *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221.) This burden of proof requires proof by a preponderance of the evidence. (See Evid. Code, § 115.)

2. a. As noted, the Commissioner seeks to deny Respondent’s MLO application under two separate statutory grounds. The first statutory grounds, the minimum threshold licensure requirements, states that the Commissioner “shall deny” an MLO application unless the Commissioner finds that 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 this division.” (Fin. Code, § 22109.1, subd. (a)(3) (relating to the California Financing Law (CFL)), and 50141, subd. (a)(3) (relating to the California Residential Mortgage Lending Act (CRMLA).)³

b. The Commissioner’s finding that an applicant meets the minimum threshold licensure requirements “relates to any matter, personal or professional, that may impact upon an applicant’s propensity to operate honestly, fairly, and efficiently when engaging in the role of a mortgage loan originator.” (Cal. Code Regs., tit. 10, § 1422.6.2 (relating to the CFL) and 1950.122.5.2 (relating to the CRMLA).

³ All further statutory references are to the Financial Code unless otherwise indicated.

c. Based on Respondent's filing for three bankruptcies⁴ and property foreclosure, and the NFA regulatory action against him, the Commissioner alleges that Respondent should be denied a license because he has not demonstrated requisite financial responsibility, character, and general fitness as to command the confidence of the community. As a result, the Commissioner cannot determine that Respondent will be able to operate honestly, fairly, and efficiently within the purposes of the CFL and CRMLA. (Fin. Code, §§ 50141, subd. (a)(3) and 22109, subd. (a)(3).) In support of licensure, Respondent deflects responsibility for both his past financial troubles and regulatory action. As a result, Respondent provides no meaningful assurances that he has attained the requisite financial responsibility, character, and general fitness to warrant licensures and to prevent future financial missteps. Accordingly, based on the evidence presented at hearing, cause exists pursuant to Financial Code sections 50140, subdivision (a)(3), and 22109, subdivision (a)(3) to deny his MLO application based on his failure to demonstrate the requisites necessary to warrant licensure. (Factual Findings 7 through 9.)

3. As a second statutory grounds, the Commissioner may deny an MLO license if an applicant "withholds information or makes a material misstatement in an application." (Fin. Code, §50513, subd. (a)(2).) MLO applicants execute the Form MU4 under penalty of perjury. (Ex. 6, p. 24; Ex. 15, pp. 82-83.) The Commissioner argues for denial of licensure because Respondent has not demonstrated the requisite character and general fitness to warrant a determination that he will operate honestly, fairly, and efficiently within the Mortgage Loan Originator Law. (Fin. Code, §§ 50141, 22109.1, and 50514, subd. (a)(2).) On this point, while it was not established that Respondent made false statements to the CDI relating to his discharge of a firearm (Factual Finding 12), the evidence is clear and troubling on the two other falsehood allegations. Specifically, Respondent willfully made material misrepresentations to the Commissioner on his Form MU4 by failing to disclose his restricted CDI license and employment with 20 20 Precious Metals. (Factual Findings 10 and 11.) No reasonable explanation was provided for Respondent's lack of candor (Factual Findings 14-17.) Cause exists, therefore, pursuant to Financial Code sections 22109.1, 50141, and 50513, subdivision (a)(2), to deny his application based on his withholding of information on his MLO application and failure to demonstrate the requisite character and general fitness necessary to warrant licensure.

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⁴ The Bankruptcy Code limits to what extent the Commissioner may rely on an MLO applicant's bankruptcy filings as a basis to deny an MLO application. (See 11 U.S.C. § 525(a) [a governmental unit may not deny a license "solely because [a] bankrupt or debtor . . . has not paid a debt that is dischargeable . . . or that was discharged . . ."].) In this matter, the Commissioner's identification of Respondent's three bankruptcy filings as a basis for denial of his MLO application is permissible because the bankruptcy filings are not the "sole" basis of denial of Respondent's licensure.

4. All evidence in mitigation and rehabilitation has been considered. Respondent has failed to establish through a preponderance of the evidence that he warrants licensure.

ORDER

Respondent Todd Joseph Krejci's application for a mortgage loan originator license is denied.

DATED: January 11, 2019



ADD1484FR103489
IRINA TENTSER
Administrative Law Judge
Office of Administrative Hearings