

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF BUSINESS
OVERSIGHT,

Complainant,

v.

RACHEL G. KESSEE,

Respondent.


CFL APPLICATION No.: 1600832

OAH No.: 2018101003

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated May 21, 2019, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on September 18, 2019.
IT IS SO ORDERED this 19th day of August, 2019.


MANUEL P. ALVAREZ
Commissioner of Business Oversight



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PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on April 25, 2019. Uche L. Enenwali, Senior Corporate Counsel, represented complainant Jan Lynn Owen, Commissioner of Business Oversight. Respondent Rachel G. Kessee represented herself. The matter was submitted for decision at the conclusion of the hearing.

Complainant seeks to deny respondent a mortgage loan originator (MLO) license and to bar respondent from any position of employment, management, or control of any finance lender, broker, or mortgage loan origination 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.

The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order denying respondent's application for licensure as a mortgage loan originator and barring respondent from employment, management, or control of any finance lender, broker, or mortgage loan originator.

FACTUAL FINDINGS

1. On September 11, 2018, Uche L. Enenwali filed the Statement of Issues and Accusation in this matter in an official capacity on behalf of complainant.

2. a. On May 8, 2018, 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 her May 8, 2018 MLO application under penalty of perjury and represented that the information she provided in the application is true and correct. The application requires respondent to make several disclosures, including the following regulatory action disclosure, which is set forth with respondent's response as noted in Exhibit 6:

b. "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever [¶] . . . [¶] (5) revoked your registration or license?" Respondent checked the "No" box accompanying the question.

3. Respondent failed to disclose the following regulatory actions:

a. On January 30, 1997, in *In the Matter of the Accusation of Rachelle Kesse Ringer, individually and doing business as North American Funding*, case number H-26492 LA, the Department of Real Estate (DRE) issued a Decision and Order revoking respondent's real estate broker license and license rights and issuing respondent a restricted real estate salesperson license subject to certain conditions. The DRE revoked respondent's real estate broker license because, in violation of the Real Estate Laws and regulations, respondent used North American Funding, an unauthorized fictitious entity, to permit an unlicensed person to commit negligence using her real estate broker license in unlicensed real estate activities, including soliciting borrowers and negotiating with third party lenders for secured loans.

b. On September 10, 1998, in *In the Matter of the Accusation of Rachelle Genese Kesse*, case number H-27677 LA, the DRE issued a Default Order authorizing disciplinary action against respondent. The DRE revoked respondent's restricted real estate salesperson license because, in violation of the Real Estate Laws and regulations, respondent engaged in fraud and dishonest conduct by misappropriating a \$1,500 down payment entrusted to her in connection with the purchase of real estate. The prospective purchaser commenced an action against respondent in Small Claims Court, and, in case number 197923, obtained a default judgment against respondent on October 12, 1997.

4. Naureen Saaed 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. Saaed reviewed respondent's May 8, 2018 MLO application and during the course of her review she consulted the DRE's website where she discovered the regulatory actions set forth in Factual Finding 3. At the administrative hearing, Saaed explained that she requested respondent to revise her May 8, 2018 MLO application to provide an explanation for the DRE's revocation of her real estate licenses and to provide all relevant documentation. Saaed additionally explained that "it looked bad to [respondent] based on the DRE information," and that she therefore notified respondent that she (respondent) had

the option of withdrawing the May 8, 2018 MLO application and reapplying at a later time after clearing her record. Respondent did not withdraw her May 8, 2018 MLO application.

Factors in Aggravation, Mitigation, and Rehabilitation

5. At the administrative hearing, respondent asserted, "I know now that the answers are incorrect." She explained her failure to disclose the DRE's decisions revoking her real estate licenses as follows: "They happened over 20 years ago, and in my mind I didn't think I would be held liable. . . . It was so long ago I thought it wouldn't come up again. . . . I didn't intentionally defraud the [DBO]. Bankruptcy after 10 years is overlooked."

6. Regarding the revocation of her real estate broker license, respondent admitted that she "rented [her] broker license," and claimed she did so "to learn commercial financing."

7. Regarding the revocation of her restricted real estate salesperson license, respondent explained that the prospective purchaser was her spouse's niece who wanted to acquire real estate without her boyfriend's knowledge. "She asked me to hold a cashier's check for \$500. She went away for several months, so there was no way to contact her. When she emerged, she filed a claim for \$1,500. I admit that I had her sign a deposit receipt. . . . I don't deny that it happened, but I never set out to defraud her." Respondent defaulted in the Small Claims Court proceeding because her car broke down on the way to court. Respondent has paid the Small Claims Court judgment.

8. Respondent's employment history includes her work at the Federal Reserve Bank investigating fraudulent claims and at Wells Fargo Bank as an underwriter. She testified that these positions required her to undergo extensive background investigations and that she was "cleared." Respondent maintained that she has worked under a real estate broker for the past 10 years and that she has "never defrauded or did anything wrong."

LEGAL CONCLUSIONS

The Statement of Issues

1. Respondent bears the burden of establishing her eligibility for MLO licensure by a preponderance of the evidence. (Gov. Code, § 11504; *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471,476.)

2. Under California Financial Code section 22172, subdivision (a), the commissioner has the authority to deny a mortgage loan originator license if an applicant fails at any time to meet the requirements of section 22109.1 or withholds information or makes a material misstatement in an application for a license.

3. Section 22109.1, subdivision (a), authorizes the commissioner to “deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings: [¶]. . . [¶] (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, Cal. Fin. Code, § 22000 et seq.]”.

4. The underlying purposes and policies of the California Financing Law include the protection of borrowers against unfair practices by unscrupulous lenders and the protection of property owners from deceptive and misleading practices. (See Cal. Fin. Code, § 22001.)

5. Respondent has a history of misconduct demonstrating irresponsibility when engaged in regulated financial activity. She permitted an unlicensed person to use of her real estate license to engage in negligence by soliciting borrowers and negotiating with third party lenders for secured loans. Her misappropriation of down payment in connection with a real property transaction resulted in a judgment against her. (Factual Findings 3a and 5b.) Notwithstanding respondent’s protestations to the contrary (Factual Finding 8), these instances of misconduct do not engender confidence that she will operate honestly, fairly, and efficiently consistent the purposes of the California Financing Law.

6. In aggravation and as an independent cause for license denial, respondent knowingly certified that information she provided in her May 8, 2018 MLO application was true and correct. However, in actuality respondent withheld information regarding her history of misconduct, which in turn rendered the information in her May 8, 2018 MLO application untrue and dishonest. (Factual Findings 3 and 5.) As stated in *Gee v. California State Personnel Bd.* (1970) 5 Cal.App.3d 713, “‘Dishonesty’ connotes a disposition to deceive. (Citation.) It . . . denotes an absence of integrity; a disposition to cheat, deceive or defraud[.]” (*Id.* at 718-719.) Courts understand integrity to mean “‘soundness of moral principle and character, as shown by a person’s dealings with others, in the making and performance of contracts, in fidelity and honesty in the discharge of trusts. In short, it is used as a synonym for probity, honesty, and uprightness in business relations with others.’” (See *In re Estate of Gordon* (1904) 142 Cal. 125, 132 quoting, *In re Bauquier* [1891] 88 Cal. 307.)

7. Honesty, truthfulness, and integrity are important qualifications to perform the functions and duties of a mortgage loan originator consistent with the policies and purposes of the California Financing Law. The DBO’s assessment of whether an applicant for MLO licensure presents with honesty, truthfulness, and integrity begins with the application process, and true and correct information is necessary in order for the DBO to determine whether the public will be adversely affected by a grant of licensure. Respondent’s omission of her history of misconduct from her May 8, 2018 MLO application impeded the DBO’s efforts to conduct a thorough review of respondent’s background, which includes her regulatory misconduct and resulting discipline, and assessment of respondent’s fitness for

licensure consistent with the policies and purposes of the California Financing Law. Respondent's omission augurs her lack of integrity to assume the duties and functions of a mortgage loan originator. No persuasive evidence establishing otherwise was offered at the administrative hearing. For example, respondent submitted no character reference letters from associates vouching for her integrity. In licensing proceedings, such as this, character reference letters from associates knowledgeable about respondent's criminal record as well as respondent's present integrity are permissible and are worthy of careful consideration. (See *Werner v. State Bar of Cal.* (1954) 42 Cal.2d 187, 196-197; *Preston v. State Bar of Cal.* (1946) 28 Cal.2d 643, 650-651.)

8. Respondent has failed to meet her burden of establishing by a preponderance of evidence her eligibility for licensure as a mortgage loan originator.

9. Cause exists pursuant to California Financial Code sections 22109.1 and 22172 to deny respondent's May 8, 2018 MLO application, in that 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 she will operate honestly, fairly, and efficiently within the purposes of the California Financing Law. (Legal Conclusions 5 through 8.)

10. Cause exists pursuant to California Financial Code section 22172 to deny respondent's May 8, 2018 MLO application, in that respondent has withheld information. (Legal Conclusions 5 through 8.)

The Accusation

11. An applicant for a mortgage loan originator license is required to complete at least 20 hours of pre-licensing education approved by the Nationwide Mortgage Licensing System and Registry. (Cal. Fin. Code, § 22109.2.) The education consists of, among other things, instruction on federal law and regulations, California law and regulations, and ethics, including fraud, consumer protection, and fair lending issues. An applicant for a mortgage loan originator license is additionally required to pass a qualified written test. (Cal. Fin. Code, §22109.3.) Post-licensing, the holder of a mortgage loan originator license is required to complete at least eight hours of continuing education. These requirements for licensing eligibility and for continuing licensure as a mortgage loan originator are intended to provide the public with protection from unethical and dishonest licensees. These requirements are analogous to the rigorous educational, training, and testing requirements for obtaining a professional license. Therefore, in connection with the Accusation in this matter, complainant bears the burden of establishing cause by clear and convincing evidence to bar respondent from employment, management, or control of any finance lender, broker or mortgage loan originator. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853,856; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

12. California Financial Code section 22169, subdivision (a), authorizes the commissioner to “bar from any position of employment, management, or control any finance lender, broker, mortgage loan originator, or any other person, if the commissioner finds either of the following: [¶] (2) That the person 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, functions, or duties of a person engaged in the business in accordance with the provisions of [the California Financing Law].

13. On October 12, 1997, the Small Claims Court rendered a civil judgment against respondent in connection with respondent’s misappropriation of a \$1,500 down payment entrusted to her for the purchase of real estate. (Factual Finding 3b.) Misappropriation of funds necessarily involves fraud, and fraud is a hallmark of dishonesty and deceit. On September 10, 1998, the DRE rendered an administrative decision disciplining respondent for her misconduct underlying the civil judgment obtained in the Small Claims Court. (*Ibid.*) Respondent breached a fiduciary duty to not to enrich herself to the detriment of consumers relying on her performance of licensed activity. Her fraudulent and dishonest conduct is related to the qualifications, functions, or duties of a mortgage loan originator. The performance of licensed activity requires more than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of discharging the functions and duties of a mortgage loan originator. The evidence establishes respondent’s inability to operate honestly and fairly.

14. Complainant has met its burden of establishing cause by clear and convincing evidence to bar respondent from employment, management, or control of any finance lender, broker, or mortgage loan originator.

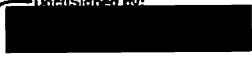
15. Cause exists pursuant to California Financial Code section 22169 to bar respondent from employment, management, or control of any finance lender, broker or mortgage loan originator. (Legal Conclusions 11 through 14.)

ORDER

1. The application of Rachel G. Kesse for a mortgage loan originator license is denied.

2. Rachel G. Kesse is barred from employment, management, or control of any finance lender, broker, or mortgage loan originator.

DATED: May 21, 2019

DocuSigned by:

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings