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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

10	In the Matter of:)	NMLS ID.: 694065
11	THE COMMISSIONER OF BUSINESS)	STATEMENT OF ISSUES IN SUPPORT OF
12	OVERSIGHT,)	NOTICE OF INTENTION TO ISSUE ORDER
13	Complainant,)	DENYING MORTGAGE LOAN
14	v.)	ORIGINATOR APPLICATION
15	HOWARD MARK GERBER,)	(Financial Code sections 22109.1 & 50141)
16	Respondent.)	

17 Manuel P. Alvarez, the Commissioner of Business Oversight (Commissioner), is informed
18 and believes and based upon such information and belief, alleges and charges as follows:

19 **I.**
20 **Introduction**

21 The Commissioner seeks to deny the issuance of a mortgage loan originator (MLO) license
22 to Howard Mark Gerber (Gerber) pursuant to Financial Code sections 22109.1 and 50141 because
23 Gerber fails to meet the minimum threshold requirements that he (1) demonstrates such financial
24 responsibility, character, and general fitness as to command the confidence of the community and to
25 warrant a determination that the mortgage loan originator will operate honestly, fairly, and
26 efficiently within the purposes of the MLO licensing laws and (2) be employed by an appropriate
27 licensee.

28 As to the first ground, Gerber's application for an MLO license must be denied because in

1 previous applications for MLO licensure the Commissioner has found facts to determine that Gerber
2 made material misstatements in an application for a license to the Commissioner on two previous
3 occasions, made a knowingly untrue statement to the Commissioner during the course of licensing
4 on one previous occasion, and did not demonstrate the requisite responsibility, character, and general
5 fitness as to command the confidence of the community and to warrant a determination that Gerber
6 will operate honestly, fairly, and efficiently within the purposes of the California Financing Law
7 (“CFL”) (Fin. Code, § 22000 *et seq.*) or the California Residential Mortgage Lending Act
8 (“CRMLA”) on two previous occasions. The Commissioner’s review of the materials Gerber
9 submitted with the present application do not warrant a finding of the requisite responsibility,
10 character, and general fitness at this time.

11 As to the second ground, Gerber’s application must be denied because Gerber is not
12 employed or supervised by a CFL or CRMLA licensee.

13 **II.**
14 **Statement of Facts**

15 **A.**
16 **History of Previous Applications**

17 1. On April 29, 2015, the Commissioner denied Gerber’s June 20, 2014, application for
18 an MLO license because: (1) Gerber, in violation of Financial Code section 50512, subdivision (b),
19 knowingly made an untrue statement to the Commissioner that no regulatory organization had ever
20 revoked his registration or license when, in fact, the Department of Real Estate revoked his real
21 estate license in 1997, and (2) Gerber failed to demonstrate such financial responsibility, character,
22 and general fitness as to command the confidence of the community and to warrant a determination
23 that Gerber would operate honestly, fairly, and efficiently within the purposes of the CRMLA.
Gerber did not request a hearing, and the denial order became final.

24 2. On August 9, 2018, the Commissioner denied Gerber’s July 11, 2017, application for
25 an MLO license after a hearing before an administrative law judge because: (1) Gerber, in violation
26 of Financial Code sections 22172, subdivision (a)(2), and 50513, subdivision (a)(2), made a material
27 misstatement in that application, (2) Gerber failed to demonstrate such financial responsibility,
28 character, and general fitness as to command the confidence of the community and to warrant a

1 determination that Gerber would operate honestly, fairly, and efficiently within the purposes of the
2 CFL and CRMLA, and (3) after the Commissioner issued notice of intent to deny the license on the
3 first two grounds, Gerber’s employment and supervision by an appropriate licensee ended.

4 **B.**
5 **2019 Application**

6 3. On September 3, 2019, Gerber filed an application on the Nationwide Mortgage
7 Licensing System & Registry (NMLS)¹ for an MLO license with the Commissioner pursuant to
8 Financial Code section 22109.2 and 50140 (“2019 Application”). The 2019 Application was
9 submitted to the Commissioner when Gerber filed a Form MU4 through NMLS.

10 4. With his 2019 Application, Gerber submitted a new letter of explanation regarding
11 the findings that led to the denial of two previous applications for MLO licensure and revocation of
12 his license issued by the California Department of Real Estate.

13 5. The new letter of explanation and Gerber’s other 2019 Application materials did not
14 demonstrate why, after considering the Commissioner’s findings in his two previous denials of MLO
15 licensure and his activities in the period since his previous application was denied, the
16 Commissioner could now find that Gerber had the requisite responsibility, character, and general
17 fitness as to command the confidence of the community and to warrant a determination that Gerber
18 will operate honestly, fairly, and efficiently within the purposes of the CFL and CRMLA.

19 6. Further, Gerber’s 2019 Application does not indicate he is currently employed or
20 sponsored by an employer who holds a license under the CFL or CRMLA.

21 **III.**
22 **Applicable Law**

23 7. Financial Code section 22109.1 provides in relevant part:

24 (a) The commissioner shall deny an application for a mortgage loan
25 originator license unless the commissioner makes, at a minimum, the
26 following findings:

26 . . .

27 ¹ NMLS is the system of record for non-depository, financial services licensing or registration in participating agencies.
28 including the District of Columbia and the U.S. Territories of Puerto Rico, the U.S. Virgin Islands, and Guam. In these
jurisdictions, NMLS is the official system for companies and individuals seeking to apply for, amend, renew and
surrender licenses authorities managed through NMLS.

1 (3) The applicant has demonstrated such financial responsibility,
2 character, and general fitness as to command the confidence of the
3 community and to warrant a determination that the mortgage loan
4 originator will operate honestly, fairly, and efficiently within the
5 purposes of this division.

6 (6) The applicant is employed by, and subject to the supervision of, a
7 finance lender or broker that has obtained a license from the
8 commissioner pursuant to this division.

9 8. Financial Code section 50141 provides in relevant part:

10 (a) The commissioner shall deny an application for a mortgage loan
11 originator license unless the commissioner makes at a minimum the
12 following findings:

13 (3) The applicant has demonstrated such financial responsibility,
14 character, and general fitness as to command the confidence of the
15 community and to warrant a determination that the mortgage loan
16 originator will operate honestly, fairly, and efficiently within the
17 purposes of this division.

18 (6) The applicant is employed by, and subject to the supervision of, a
19 residential mortgage lender or servicer that has obtained a license from
20 the commissioner pursuant to this division.

21 **IV.**
Character of the Applicant

22 9. The Commissioner’s past findings relating to Gerber’s previous applications for MLO
23 licensure establish that Gerber does not demonstrate the requisite character and general fitness to
24 command the confidence of the community nor to warrant a determination by the Commissioner that
25 he will operate honesty, fairly and efficiently within the purposes of the CFL or CRMLA. Nothing in
26 Gerber’s 2019 Application for licensure demonstrates a different determination. As such, Gerber’s
27 MLO application must be denied pursuant to Financial Code sections 22109.1, subdivision (a)(3),
28 and 50141, subdivision (a)(3).

V.
Lack of Employing and Supervising Licensee

12. Gerber is not employed by nor subject to the supervision of a CFL or CRMLA
licensee. As such, Gerber’s MLO application must be denied pursuant to Financial Code sections
22109.1, subdivision (a)(6), and 50141, subdivision (a)(6).

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VI.
Conclusion

The Commissioner finds, by reason of the foregoing, that Gerber fails to demonstrate such character and general fitness as to command the confidence of the community and to warrant a determination that Gerber will operate honestly, fairly, and efficiently as a mortgage loan originator. The Commissioner further finds that Gerber is not employed by and subject to the supervision of a CFL or CRMLA licensee.

THEREFORE, Financial Code section 22109.1 and 50141 mandates that the Commissioner not issue a mortgage loan originator license to Gerber.

WHEREFORE IT IS PRAYED that the mortgage loan originator application dated September 3, 2019, filed by Howard Mark Gerber, be denied.

Dated: December 18, 2019
Sacramento, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
JEREMY F. KOO
Counsel