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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)
OVERSIGHT,) ORDER DENYING MORTGAGE LOAN
12) ORIGINATOR APPLICATION
Complainant,) (Financial Code sections 22109.1 & 50141)
13)
v.)
14)
15 HOWARD MARK GERBER,)
Respondent.)
16 _____)

17 Manuel P. Alvarez, the Commissioner of Business Oversight (Commissioner), finds against
18 Respondent Howard Mark Gerber (Gerber) as follows:

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

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

27 As to the first ground, Gerber’s application for an MLO license must be denied because in
28 previous applications for MLO licensure the Commissioner has found facts to determine that Gerber

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

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

12 **II.**
13 **Statement of Facts**

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

16 1. On April 29, 2015, the Commissioner denied Gerber’s June 20, 2014, application for
17 an MLO license because: (1) Gerber, in violation of Financial Code section 50512, subdivision (b),
18 knowingly made an untrue statement to the Commissioner that no regulatory organization had ever
19 revoked his registration or license when, in fact, the Department of Real Estate revoked his real
20 estate license in 1997, and (2) Gerber failed to demonstrate such financial responsibility, character,
21 and general fitness as to command the confidence of the community and to warrant a determination
22 that Gerber would operate honestly, fairly, and efficiently within the purposes of the CRMLA.
23 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
determination that Gerber would operate honestly, fairly, and efficiently within the purposes of the

1 CFL and CRMLA, and (3) after the Commissioner issued notice of intent to deny the license on the
2 first two grounds, Gerber’s employment and supervision by an appropriate licensee ended.

3 **B.**
4 **2019 Application**

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

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

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

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

20 **III.**
21 **Applicable Law**

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

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

25 (3) The applicant has demonstrated such financial responsibility,
26 character, and general fitness as to command the confidence of the

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 community and to warrant a determination that the mortgage loan
2 originator will operate honestly, fairly, and efficiently within the
purposes of this division.

3 ...
4 (6) The applicant is employed by, and subject to the supervision of, a
finance lender or broker that has obtained a license from the
commissioner pursuant to this division.

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

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

8 ...
9 (3) The applicant has demonstrated such financial responsibility,
10 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.

11 ...
12 (6) The applicant is employed by, and subject to the supervision of, a
residential mortgage lender or servicer that has obtained a license from
the commissioner pursuant to this division.

13 **IV.**
14 **Character of the Applicant**

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

22 **V.**
23 **Lack of Employing and Supervising Licensee**

24 10. Gerber is not employed by nor subject to the supervision of a CFL or CRMLA
25 licensee. As such, Gerber's MLO application must be denied pursuant to Financial Code sections
26 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 on December 18, 2019, the Commissioner issued a Notice of Intention to Issue Order Denying Mortgage Loan Originator Application, Statement of Issues, and accompanying documents (Notice of Intention to Deny) based on the above findings. The Notice of Intention to Deny was served on Gerber on December 19, 2019. Gerber did not request a hearing and the time to request a hearing has expired.

NOW GOOD CAUSE APPEARING THEREFOR, it is hereby ordered that the mortgage loan originator application dated September 3, 2019, filed by Howard Mark Gerber, is denied.

Dated: January 16, 2020
Sacramento, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner