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

11	In the Matter of:)	NMLS NO.: 325090
12	THE COMMISSIONER OF BUSINESS)	
13	OVERSIGHT,)	ORDER DENYING APPLICATION FOR
14	Complainant,)	MORTGAGE LOAN ORIGINATOR LICENSE
15	v.)	
16	PETER CARL FOPPIANO,)	
17	Respondent.)	

18
19 The Commissioner of Business Oversight (Commissioner) finds:

20 1. On January 28, 2019, Respondent Peter Carl Foppiano (Foppiano) applied to the
21 Commissioner for a mortgage loan originator (MLO) license under the California Financing Law
22 (CFL) (Fin. Code, § 22000 et seq.). Foppiano applied by filing a Form MU4 through the
23 Nationwide Mortgage Licensing System and Registry (NMLS).

24 2. As described in more detail below, the Commissioner denies the issuance of an MLO
25 license to Alvarez under Financial Code sections 22109.1 and 22172 because Foppiano: (1)
26 withheld information and made material misstatements in his application for a license; and (2) has
27 not demonstrated such financial responsibility, character, and general fitness as to command the
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1 confidence of the community and to warrant a determination that he will operate honestly, fairly,
2 and efficiently as an MLO.

3 3. On January 28, 2019, Foppiano applied for an MLO license by filing a Form MU4
4 through NMLS. His application was sponsored by a lender licensed under the CFL.

5 4. Form MU4 question (A)(3) asked: “Have you been the subject of a foreclosure
6 action within the past 10 years?”

7 5. Foppiano answered “Yes” to question (A)(3). In the event explanation for question
8 (A)(3), Foppiano stated that because of “the downturn in the real estate market,” he was “unable to
9 afford house payments,” and the bank foreclosed on the home. Foppiano did not provide supporting
10 documentation for his explanation.

11 6. Form MU4 question (D) asked: “Do you have any unsatisfied judgments or liens
12 against you?”

13 7. Foppiano answered “No” to question (D).

14 8. Form MU4 question (K) asked, in relevant part:

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

17 . . .

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

21 . . .

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

23 9. Foppiano answered “No” to questions (K)(6) and (K)(9).

24 10. Form MU4 question (N) asked: “Is there a pending regulatory action proceeding
25 against you for any alleged violation described in (K) . . . ?”

26 11. Foppiano answered “No” to question (N).

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1 12. On January 30 and February 13, 2019, Foppiano filed amended Form MU2s with
2 minor clerical changes. His answers to the disclosure questions, including those mentioned above,
3 remained unchanged.

4 13. On February 28, 2019, the Commissioner placed a license item on Foppiano’s
5 NMLS account, noting that Foppiano had answered “No” to Form MU4 question (K)(6) although
6 records indicated that he should have answered “Yes.” The Commissioner requested that Foppiano
7 file an amended application with a detailed explanation of the circumstances and upload any
8 applicable legal documents.

9 14. On April 3, 2019, the Commissioner placed a license item on Foppiano’s NMLS
10 account, noting that he had failed to disclose a pending action by the California Department of Real
11 Estate (DRE). The Commissioner requested that Foppiano file an amended application with a
12 detailed explanation of the circumstances and upload any applicable legal documents.

13 15. On April 5, 2019, Foppiano filed an amended Form MU2 in which he changed his
14 “No” answer to question (N) regarding pending regulatory proceedings to “Yes.” In the event
15 explanation for question (N), Foppiano characterized the event as a “[p]ending investigation by the
16 DRE” but did not provide any additional explanation or details. Foppiano uploaded an electronic
17 file containing a letter dated February 13, 2019, from Foppiano to the DRE. Included as enclosures
18 to the letter were a copy of an accusation dated February 4, 2019, and pages containing Foppiano’s
19 responses to audit findings which he had previously provided to the DRE.

20 16. In none of his amended application filings did Foppiano change his “No” answers to
21 question (D) regarding unsatisfied judgments or liens or to questions (K)(6) and (K)(9) regarding
22 disciplinary actions by regulators.

23 17. Records obtained from the Commissioner’s investigation show that the DRE
24 suspended Foppiano’s real-estate broker license for 30 days under a stipulation and agreement dated
25 October 21, 2009, which was adopted by the DRE as its decision. The DRE found cause to suspend
26 Foppiano’s license based on his failure to exercise reasonable supervision over salespersons and
27 various related violations of the Real Estate Law.

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1 18. Records obtained from the Commissioner’s investigation show that on February 4,
2 2019, the DRE issued an accusation against Foppiano. On February 21, 2019, the DRE issued an
3 amended accusation. Foppiano filed a notice of defense, and on August 20, 2019, an administrative
4 hearing was held on the accusation. On August 30, 2019, the administrative law judge issued a
5 proposed decision, which was adopted by the DRE on October 10, 2019. In its decision, the DRE
6 revoked Foppiano’s real-estate broker license and issued a restricted broker license. The DRE found
7 cause to revoke Foppiano’s license based in part on violations arising from mortgage loan
8 origination activity. The decision became effective on January 14, 2020, after the DRE denied
9 Foppiano’s petition for reconsideration.

10 19. Records obtained from the Commissioner’s investigation show that on July 24, 2008,
11 a notice of default was recorded against Foppiano, thereby formally commencing the foreclosure
12 process. A notice of sale was recorded on November 24, 2008, and the sale occurred on or around
13 June 26, 2009.

14 20. Records obtained from the Commissioner’s investigation show that as of the date of
15 his initial application, Foppiano had unsatisfied liens against him, as follows.

16 21. On August 30, 2011, the Internal Revenue Service (IRS) filed a notice of federal tax
17 lien against Foppiano in the amount of \$622.86 for tax year 2008 with the Sonoma County recorder
18 under record number 2011073501. No certificate of release for this tax lien appears to exist, and the
19 lien has not been released by operation of the self-releasing language on the face of the notice.

20 22. On February 22, 2017, the IRS filed a notice of federal tax lien against Foppiano in
21 the amount of \$11,963.18 for tax year 2012 with the Sonoma County recorder under record number
22 2017013596. No certificate of release for this tax lien appears to exist, and the lien has not been
23 released by operation of the self-releasing language on the face of the notice.

24 23. On March 8, 2017, the IRS filed a notice of federal tax lien against Foppiano in the
25 amount of \$22,758.58 for tax years 2013 and 2014 with the Sonoma County recorder under record
26 number 2017018287. No certificate of release for this tax lien appears to exist, and the lien has not
27 been released by operation of the self-releasing language on the face of the notice.

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1 24. On May 2, 2017, the IRS filed an amended notice of federal tax lien against
2 Foppiano in the amount of \$447,102.90 for tax years 1999, 2000, 2002, 2003, 2004, 2005, and 2006
3 with the San Joaquin County recorder under record number 2017-049209. The original notice had
4 been filed on August 9, 2010, with the San Joaquin County recorder under record number 2010-
5 103610. No certificate of release for this tax lien appears to exist, and as of the date of Foppiano’s
6 initial application, the liens had not been released by operation of the self-releasing language on the
7 face of the notice.

8 **Withheld Information and Material Misstatements**

9 25. The Commissioner may deny an application for an MLO license if the applicant
10 withholds information or makes a material misstatement in the application. (Fin. Code, § 22172,
11 subd. (a)(2).)

12 26. As described in paragraphs 8 to 16, Foppiano failed to disclose the 2009 DRE
13 suspension of his real-estate broker license or upload related records despite filing numerous
14 amended applications. Foppiano was required to disclose the 2009 suspension in response to Form
15 MU4 questions (K)(6) and (K)(9), which asked whether a regulatory agency had taken disciplinary
16 action against him concerning a license, but he failed to do so, even after the Commissioner noted
17 that he should have answered “Yes” to question (K)(6).

18 27. As described in paragraphs 8 to 16, Foppiano failed to disclose the 2019 DRE
19 disciplinary proceeding against him after it began and while it was pending. Foppiano filed an
20 amended application with the Commissioner several days after the DRE issued its February 4, 2019
21 Accusation, but he failed to disclose the pending DRE proceeding, leaving unchanged his “No”
22 answer to question (N). Foppiano disclosed the proceeding in his April 5, 2019 Form MU2 only
23 after the Commissioner discovered it and asked Foppiano about it. Even so, Foppiano
24 misrepresented the proceeding, characterizing it as a “[p]ending investigation” when, in fact, the
25 DRE had concluded its audit and initiated disciplinary proceedings by filing the accusation.

26 28. As described in paragraphs 6, 7, 12, 15, and 16, Foppiano failed to disclose
27 unsatisfied tax liens, answering “No” to question (D) in all of his application filings.

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1 29. Thus, Foppiano withheld information and made material misstatements in his
2 application for a license. Under Financial Code section 22172, subdivision (a)(2), Foppiano’s
3 application should be denied.

4 **Financial Responsibility, Character, and General Fitness**

5 30. The Commissioner “shall deny” an application for an MLO license unless he makes,
6 at a minimum, specified findings, including that the applicant has demonstrated such financial
7 responsibility, character, and general fitness as to command the confidence of the community and to
8 warrant a determination that the applicant will operate honestly, fairly, and efficiently as a mortgage
9 loan originator. (Fin. Code, § 22109.1, subd. (a)(3).)

10 31. As described in paragraphs 17 to 18, Foppiano’s real-estate broker license was
11 suspended by the DRE in 2009 and revoked in 2019. Notably, the revocation was based in part on
12 violations arising from mortgage loan origination activity, the same activity for which he now seeks
13 a license from the Commissioner. Foppiano’s disciplinary history militates against finding that he
14 has demonstrated the character and general fitness required for licensure as an MLO.

15 32. Further, as described in paragraphs 26 to 27, Foppiano did not disclose either
16 disciplinary action until after the Commissioner discovered them and asked Foppiano about them.
17 Thus, although the DRE suspension occurred some time ago, Foppiano’s lack of candor in
18 disclosing both prior and pending discipline militates against finding that he has demonstrated the
19 character and general fitness required for licensure as an MLO.

20 33. As described in paragraph 19, Foppiano was the subject of a foreclosure action in
21 2008 and 2009. Foppiano’s foreclosure weighs against finding that he has demonstrated the
22 financial responsibility required for licensure as an MLO.

23 34. As described in paragraphs 20 to 24 and 28, Foppiano had unsatisfied tax liens
24 against him spanning 11 years and totaling over \$480,000.00, which he failed to disclose in his
25 application. Foppiano’s unsatisfied tax liens and his lack of candor in disclosing their existence
26 weigh against finding that he has demonstrated the financial responsibility, character, and general
27 fitness required for licensure as an MLO. (See Cal. Code Regs., tit. 10, § 1422.6.2, subd. (c)(2)
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1 [MLO license may be denied when applicant’s personal history includes “liens, judgments, or
2 financial or professional conditions that indicate a pattern of dishonesty”].)

3 35. For all these reasons, Foppiano has not demonstrated such financial responsibility,
4 character, and general fitness as to command the confidence of the community and to warrant a
5 determination that he will operate honestly, fairly, and efficiently as an MLO. Under Financial
6 Code section 22109.1, subdivision (a)(3), Foppiano’s application must be denied.

7 36. For the foregoing reasons, the Commissioner finds that Foppiano: (1) withheld
8 information and made material misstatements in his application; and (2) has not demonstrated such
9 financial responsibility, character, and general fitness as to command the confidence of the
10 community and to warrant a determination that he will operate honestly, fairly, and efficiently as an
11 MLO. Under Financial Code sections 22109.1, subdivision (a)(3), and 22172, subdivision (a)(2),
12 the Commissioner has grounds to deny Foppiano’s application.

13 37. On April 30, 2020, the Commissioner issued a Notice of Intention to Issue Order
14 Denying Application for Mortgage Loan Originator License, Statement of Issues, and
15 accompanying documents. On May 5, 2020, the documents were served by certified mail at
16 Foppiano’s latest address on file.

17 38. Foppiano has not requested a hearing, and the time for doing so has expired.

18 NOW GOOD CAUSE APPEARING THEREFORE, it is hereby ordered that the application
19 of Peter Carl Foppiano for a mortgage loan originator license is denied. This Order is effective
20 immediately.

21
22 Dated: May 26, 2020
23 Los Angeles, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

24
25 By: _____
26 MARY ANN SMITH
27 Deputy Commissioner
28 Enforcement Division