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9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

<p>12 In the Matter of:</p> <p>13 THE COMMISSIONER OF BUSINESS OVERSIGHT,</p> <p>14 Complainant,</p> <p>15 v.</p> <p>16 ANDREW KENNETH KIEMM,</p> <p>17 Respondent.</p>	<p>) MLO APPLICATION NO. 345157</p> <p>)</p> <p>) STATEMENT OF ISSUES IN SUPPORT OF</p> <p>) NOTICE OF INTENTION TO ISSUE ORDER</p> <p>) DENYING MORTGAGE LOAN</p> <p>) ORIGINATOR LICENSE APPLICATION AND</p> <p>) BARRING ANDREW KENNETH KIEMM</p> <p>) FROM ANY POSITION OF EMPLOYMENT,</p> <p>) MANAGEMENT, OR CONTROL OF ANY</p> <p>) RESIDENTIAL MORTGAGE LENDER,</p> <p>) SERVICER, OR MORTGAGE LOAN</p> <p>) ORIGINATOR</p> <p>)</p>
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21 The Commissioner of Business Oversight (Commissioner) alleges and charges Respondent
22 as follows:

23 **I.**

24 **Introduction**

25 1. The Commissioner seeks to deny the issuance of a mortgage loan originator (MLO)
26 license to Andrew Kenneth Kiemm (Kiemm) under Financial Code section 22109.1, subdivision
27 (a)(3), of the California Financing Law (Fin. Code, § 22000 et seq.) (CFL), and Financial Code
28 section 50141, subdivision (a)(3), of the California Residential Mortgage Lending Act (Fin. Code, §

1 50000 et seq.) (CRMLA) in that Kiemm has not demonstrated such financial responsibility,
2 character, and general fitness as to command the confidence of the community and to warrant a
3 determination that Kiemm will operate honestly, fairly, and efficiently within the purposes of the
4 CFL and CRMLA. Further, the Commissioner seeks to bar Kiemm under CFL section 22169,
5 subdivision (a)(2) and CRMLA section 50318, subdivision (a)(2)(B), from any position of
6 employment with, or management or control of, any finance lender, broker, or mortgage loan
7 originator on the basis that Kiemm has been held liable in a civil action by final judgment, or
8 administrative judgment by a public agency, and the civil or administrative judgment involves an
9 offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the
10 qualifications, functions, or duties of a person engaged in the business of MLO.

11 **II.**

12 **Application**

13 2. On April 19, 2013, Kiemm was granted an MLO license, NMLS unique identifier
14 number 345157, which expired on January 01, 2014.

15 3. On August 28, 2019, Kiemm filed an application for an MLO license with the
16 Commissioner by submitting a Form MU4 (Application) through the Nationwide Mortgage
17 Licensing System (NMLS) under Financial Code section 50140.

18 4. Kiemm answered “Yes” to Regulatory Action Disclosure Questions K (5) and (6),
19 which ask, in pertinent part:

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

22

23 (5) revoked your registration or license?

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

27 5. Kiemm provided the following explanation in response to Questions K (5) and (6):
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Late 2009 a longtime friend, Miles Masters, requested that I be broker of record for his new loan modification business. I have known Mr. Masters for the previous 10 years and known him to do things right, therefore I agreed to his requests. I had no financial interest in Milestones Capital nor was I compensated for the use of my broker license, I was just doing a friend a favor. I was assured that Milestone Capital was an attorney based loan modification company and so adhered to different regulations when it came to accepting upfront fees. I was naive and ignorant to the whole loan modification business. I was trying to make a go of my own start-up AAG Services Company. During the time I was broker of record, a complaint was filed to the DRE from an unsatisfied customer of Milestone Capital I cooperated fully with the subsequent investigation and gave the investigator my side of the situation, they held a hearing, and with no money for an attorney to defend myself, I made the huge mistake of not even going to the hearing. All the “yes” answers as I indicated was a result from just doing my friend a “favor”. I was named in a few civil court cases along with Milestone Capital, where monetary judgements were issued. All these have been satisfied. I have attached the DRE documents.

6. Kiemmm answered “Yes” to Financial Disclosure Questions A (1) and D, which ask, in

pertinent part:

A (1) Have you filed a personal bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past 10 years?

...

(D) Do you have any unsatisfied judgments or liens against you?

7. Kiemmm provided the following explanation in response to Questions A (1) and (D):

I have been in the mortgage industry for the past 16yrs and when the mortgage meltdown happen in 2007, my income was non-existent. I was bouncing around and I try to start a small business but failed. I had unpaid tax liabilities and medical bills that was affecting my ability to work. therefore I was advised that the best thing to do was to file for personal bankruptcy which I did. The bankruptcy was discharged in 08/27/2012 I have attached the discharge papers for the BK. I had 2 IRS tax liens filed, the one for 30k has been released, the other one for 39K was been entered into an installment agreement with the promise of it to be released after 3 successful on-time payments....

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1 8. The Department investigates each mortgage loan originator license application it
2 receives. The Department’s investigation disclosed that on or about March 29, 2010, the
3 Commissioner of the Department of Real Estate (DRE) filed an accusation against Kiemm in *The*
4 *Matter of the Accusation of Milestone Capital Group Inc. and Andrew Kenneth Kiemm, individually,*
5 *and formerly as designated officer of Milestone Capital Group Inc., (DRE v. Kiemm)*, Case No. H-
6 36566 LA, for “lending his broker license to a friend” in violation of Business and Professions Code
7 section 10159.2.

8 9. The DRE’s accusation noted that Kiemm was, at all relevant times, the designated
9 officer of Milestone Capital Group, Inc. — an entity licensed by the DRE as a real estate broker
10 (Milestone). The DRE’s accusation alleged that in response to the DRE’s inquiry regarding
11 Kiemm’s involvement with Milestone, Kiemm submitted a letter to the DRE dated October 20,
12 2009, stating “I have nothing to do with that company and just made the mistake of lending my
13 broker license to a friend.” The DRE determined that Kiemm’s conduct “constitutes a breach of
14 responsibility by the corporate officer in charge,” in violation of Business and Professions Code
15 sections 10085 and “provides cause for the suspension or revocation of the licensees and license
16 rights of Kiemm” pursuant to Business and Professions Code sections 10177(d), and 10177(g).

17 10. The DRE’s accusation further alleged that on about February 16, 2009, Milestone
18 engaged in business as a real estate broker in violation of the Real Estate Law by unlawfully entering
19 into agreements with at least four borrowers and negotiating loan modifications on behalf of the
20 borrowers in exchange for multiple illegal “advance fees” totaling \$11,480.00, in violation of
21 Business and Professions Code section 10085 and California Code of Regulations, title 14, section
22 2970. The DRE’s accusation stated that Milestone failed to submit the advance fee agreements to
23 the DRE Commissioner ten days before using the agreements, in violation of California Code of
24 Regulations, title 14, section 2970.

25 11. On or about March 17, 2010, Milestone petitioned the DRE to voluntarily surrender
26 its real estate broker license pursuant to the Business and Professions Code section 10100.2.

27 12. On June 24, 2010, DRE Commissioner, Jeff Davi (DRE Commissioner) entered an
28 Order accepting Milestone’s petition for voluntary surrender of its real estate broker license.

1 13. On July 20, 2020, DRE Commissioner entered a Default Order in the *DRE v. Kiemm*
2 action against Kiemm after observing that Kiemm failed to file a Notice of Defense within the time
3 required by Government Code section 11506 and was in default.

4 14. On August 10, 2010, DRE Commissioner issued a Decision finding that the conduct,
5 acts and/or omissions of Kiemm, as set forth in the accusation filed against him "... constitute a
6 breach of responsibility by the corporate officer in charge, in violation of Code Section 10159.2. It
7 also provides cause for the suspension or revocation of the licenses and license rights of Respondent
8 KIEMM pursuant to Code Sections 10177(d), 10177(h) and 10177(g)." DRE Commissioner's
9 Decision of August 10, 2010 further ordered that "The license and license rights of Respondent
10 ANDREW KENNETH KIEMM under the provisions of Part I of Division 4 of the Business and
11 Professions Code are revoked.... Effective 10/4/2010." (Revocation Order)

12 15. On April 25, 2018, Kiemm filed a petition with the DRE *In the Matter of the*
13 *Accusation of Andrew Kenneth Kiemm*, Case No. H-36566 LA seeking reinstatement of his real
14 estate broker license.

15 16. On April 30, 2019, Acting Real Estate Commissioner, Daniel J. Sandri, issued an
16 Order denying Kiemm's petition for the reinstatement of his real estate broker's license (Order
17 Denying Reinstatement). The Order Denying Reinstatement found that Kiemm failed to meet the
18 criteria developed by the DRE pursuant to California Code of Regulations, title 10, section 2911 for
19 evaluating the rehabilitation of an applicant for reinstatement of a license.

20 17. The Order Denying Reinstatement showed Kiemm failed to demonstrate adequate
21 rehabilitation to warrant the reinstatement of his real estate broker's pursuant to California Code of
22 Regulations, title 10, section 2911 based upon facts including the following:

23 **2911- Criteria for Rehabilitation**

24 (a) (10) Discharge of, or bona fide efforts toward discharging adjudicated
25 debts or monetary obligations to others.

26 On March 14, 2000, Respondent entered into a Stipulation and Order
27 before the U.S. Bankruptcy Court, Central District of California, in Case
28 No 8:99-ap-01984-JR. Among the terms of the Stipulation and Order was
 a \$1,360,000.00 judgment against Respondent, in favor of Peter Huang.
 The debt was found to be non-dischargeable. On June 5, 2009 a Renewal

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of Judgment was issued, extending enforceability of the judgement for 10 years. A November 15, 2018 letter from Respondent’s counsel stated “I believe the matter will lapse after June of 2019. If the judgment is renewed, we will take the appropriate action to resolve the matter at that time.” Therefore, Respondent has offered no evidence of bona fide efforts toward resolving his \$1,360,000 judgment....

(a)(14) Change in attitude from that which existed at the time of the conduct in question as evidenced by the following:
(A) Testimony and/or other evidence of rehabilitation submitted by the applicant.

In response to Question 4A in his Enforcement Petition Application, to wit “Do you have any past debts, outstanding judgments, or have you filed for bankruptcy?”, Respondent disclosed a different bankruptcy, but did not disclose the bankruptcy which led to the \$1,360,00 judgment described above....

18. The Order Denying Reinstatement concluded that Kiemm failed to demonstrate he has undergone sufficient rehabilitation to warrant the reinstatement of his real estate broker license.

19. The Department’s further investigation and review of Kiemm’s application revealed Kiemm submitted two applications for an MLO license with the State of Colorado in July 2016 and May 2017. Both applications were denied on the basis that the Kiemm “has not demonstrated financial responsibility, character, and general fitness to commend the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently; and Respondent has had a mortgage loan originator license or similar license revoked in any jurisdiction.”

20. The Department’s investigation and review of public records pertaining to Kiemm disclosed multiple civil monetary judgement were entered against Kiemm, including but not limited to the following:

Date of Action	Amount of Judgment	Plaintiff/Creditor
3/2/2010	\$3,495.00	B. A.
2/23/2010	\$3,000.00	Ar. P.
1/26/2010	\$2,995.00	P. M.

1	12/30/2008	\$30,795.00	Y. K.
2	5/21/1992	\$ 8,000.00	Foot Joy Inc.
3	2/21/1991	\$ 6,817.00	Foot Joy Inc.

III.

Grounds to Deny MLO License

21. Paragraphs 1-20 are hereby realleged and incorporated herein by reference as if set forth in their entirety.

22. Section 22109.1 of the CFL and section 50141 of the CRMLA provide in relevant part:

(a) The commissioner shall 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 this division.

(Fin. Code, §§ 22109.1 and 50141)

23. Section 50513 of the CFL provides in relevant part:

(a) The commissioner may do one or more of the following:

...

(2) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 50141 or 50144, or withholds information or makes a material misstatement in an application for a license or license renewal.

(Fin. Code, § 50513, subdivision (a)(2))

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1 Failure to Demonstrate Requisite Financial Responsibility, Character, and General Fitness

2 24. Paragraphs 1- 23 are hereby realleged and incorporated herein by reference as if set
3 forth in their entirety.

4 25. Based on the foregoing facts, the Commissioner finds that Kiemm has failed to
5 demonstrate such financial responsibility, character, and general fitness as to command the
6 confidence of the community and to warrant a determination that the mortgage loan originator will
7 operate honestly, fairly, and efficiently within the purposes of the CFL, a requirement for licensure
8 under Financial Code section 22109.1, subdivision (a)(3).

9 26. The underlying purposes and policies of the CFL include the protection of borrowers
10 against unfair practices by unscrupulous lenders and the protection of property owners from
11 deceptive and misleading practices. (See Cal. Fin. Code, §22001) Honesty, truthfulness, and
12 integrity are important qualifications necessary to perform the functions and duties of a mortgage
13 loan originator consistent with the policies and purposes of the CFL.

14 27. The California Supreme Court observed when discussing the qualifications of real
15 estate professionals:

16 Where the occupation is one wherein those following it act as the
17 agents and representatives of others and in a more or less confidential
18 and fiduciary capacity, it certainly can be fairly said that those
19 pursuing it should have in a particular degree the qualifications of
20 honesty, truthfulness, and good reputation. (*Riley v. Chambers* (1919)
21 181 Cal. 589, 594 [185 P. 855]; accord, *Golde v. Fox* (1979) 98
22 Cal.App.3d 167, 176 [“(T)here is more to being a licensed professional
23 than mere knowledge and ability. Honesty and integrity are deeply and
24 daily involved in various aspects of the practice.”].)

25 28. In *Gee v. California State Personnel Bd.* (1970) 5 Cal.App.3d 713, the appellate court
26 expressed that “dishonesty” connotes a disposition to deceive. (Citation.) It ... denotes an absence of
27 integrity; a disposition to cheat, deceive or defraud[.]” (*Id.* at pp. 718-719.) Courts have held
28 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 quoting, *In re Bauquier* (1891) 88 Cal.307.)

1 29. In *Harrington vs. Dept of Real Estate* (1989) 214 Cal.App.3d 394, the court stated
2 that lack of candor in completing a license application is itself sufficient to sustain a finding that the
3 applicant does not yet appreciate the need to speak honestly about and to accept responsibility for
4 one's actions.

5 30. As alleged in paragraph 9 above, Kiemm admitted that he rented his broker license,
6 stating, "I have nothing to do with that company and just made the mistake of lending my broker
7 license to a friend."

8 31. As alleged in paragraph 10 above, the Revocation Order found that Milestone – an
9 entity of which Kiemm was an officer, unlawfully charged at least four borrowers multiple illegal
10 "advance fees totaling \$11,480.00, in exchange for negotiating loan modifications for the borrowers
11 in violation of Business and Professions Code section 10085 and California Code of Regulations,
12 title 14, section 2970. The Revocation Order described Kiemm's conduct as constituting "a breach
13 of responsibility by the corporate officer in charge," in violation of the Real Estate Law and
14 "provides cause for the suspension or revocation of the licensees and license rights of Kiemm"
15 pursuant to Business and Professions Code sections 10085, 10177(d) and 10177 (g).

16 32. As alleged in paragraphs 16 and 17 above, the Order Denying Reinstatement
17 established that Kiemm failed to answer truthfully in his petition for the reinstatement of his real
18 estate broker license filed with the DRE. Kiemm was asked "Do you have any past debts,
19 outstanding judgments, or have you filed for bankruptcy?" In response, he "disclosed a different
20 bankruptcy, but did not disclose the bankruptcy which led to the \$1,360,00 judgment described
21 above." The Order Denying Reinstatement found that based on Kiemm's lack of candor he failed to
22 demonstrate he has undergone sufficient rehabilitation to warrant the reinstatement of his real estate
23 broker license.

24 33. As alleged in paragraph 19 above, and as Kiemm alludes in his explanations in
25 paragraphs 5 and 7 above, Kiemm has had several monetary judgments entered against him, which
26 further cast doubt to his financial responsibility, character and general fitness to engage in the MLO
27 industry.

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1 Kiemm has been held liable in a civil action by administrative judgment for committing acts of
2 fraud, dishonesty, or deceit

3 37. The Commissioner finds that based on the foregoing facts, Kiemm has been held
4 liable in a civil action by final judgment, or administrative judgment by a public agency, and the
5 civil or administrative judgment involved an offense involving dishonesty, fraud, or deceit, or any
6 other offense reasonably related to the qualifications, functions, or duties of a person engaged in the
7 business of MLO. As alleged in paragraphs 9, 10, 16, 17 and 19 above, Kiemm admitted that he
8 rented his broker license. Kiemm and Milestone – an entity of which Kiemm was an officer, were
9 found to have unlawfully charged borrowers multiple illegal “advance fees in exchange for
10 negotiating loan modifications for the borrowers in violation of Business and Professions Code
11 section 10085 and California Code of Regulations, title 14, section 2970. The Order Denying
12 Reinstatement further established that Kiemm failed to answer truthfully in his petition for the
13 reinstatement of his real estate broker license and due to his lack of candor, he failed to demonstrate
14 he has undergone sufficient rehabilitation to warrant the reinstatement of his real estate broker
15 license.

16 38. The Commissioner hereby finds that the above-referenced actions against Kiemm by
17 the DRE and the facts upon which such actions were issued, constitute grounds under Financial
18 Code section 50318, subdivision (a)(2)(B) to bar Kiemm from any position of employment with, or
19 management or control of, any finance lender, broker, or mortgage loan originator.

20 **V.**

21 **Conclusion**

22 Based on the foregoing facts, the Commissioner finds that Kiemm has failed to demonstrate such
23 financial responsibility, character, and general fitness as to command the confidence of the
24 community and to warrant a determination that the mortgage loan originator will operate honestly,
25 fairly, and efficiently within the purposes of the CFL. The Commissioner pursuant to Financial Code
26 sections 22109.1, 50513, and 50141 seeks to deny the mortgage loan originator license application
27 number 345157 filed by Andrew Kenneth Kiemm on August 28, 2019.

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WHEREFORE IT IS PRAYED, by reason of the foregoing, under Financial Code sections 22109.1, 50513, and 50141 that the mortgage loan originator license application filed by Andrew Kenneth Kiemm on August 28, 2019 be denied.

Further, based on the foregoing, the Commissioner finds that Kiemm has been held liable in a civil action by final judgment, or administrative judgment by a public agency, and the civil or administrative judgment involved an 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 of MLO.

The Commissioner pursuant to Financial Code sections 22169, subdivision (a)(2) and 50318, subdivision (a)(2)(B) finds it is in the public interest to bar Andrew Kenneth Kiemm from any position of employment with, or management or control of, any finance lender, broker, or mortgage loan originator.

WHEREFORE, IT IS PRAYED that Andrew Kenneth Kiemm be barred in the State of California from any position of employment with, or management or control of, any finance lender, broker, or mortgage loan originator pursuant to California Financial Code section 50318 subdivision (a)(2)(B).

Dated: May 21, 2020

MANUEL P. ALVAREZ

Commissioner of Business Oversight

By _____
UCHE L. ENENWALI
Senior Counsel
Enforcement Division