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

11 In the Matter of:)	NMLS ID: 1880999
)	
12 THE COMMISSIONER OF BUSINESS)	STATEMENT OF ISSUES IN SUPPORT OF
13 OVERSIGHT,)	DENIAL OF MORTGAGE LOAN
)	ORIGINATOR LICENSE
14 Complainant,)	
)	
15 v.)	
)	
16 ALAN J. UPSHUR,)	
)	
18 Respondent.)	
)	
)	

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22 The Complainant, the Commissioner of Business Oversight (Commissioner), of the
23 Department of Business Oversight (Department), is informed and believes, and based upon such
24 information and belief, alleges and charges Respondent as follows:

25 **I.**
26 **Introduction**

27 1. The Commissioner seeks an order to deny the issuance of a mortgage loan originator
28 (MLO) license to Alan J. Upshur (Upshur) pursuant to Financial Code section 50141, subdivision

1 (a)(2) of the California Residential Mortgage Lending Act (Fin. Code § 50000 *et seq.*) (CRMLA) in
2 that Upshur was convicted in the State of Maryland of a felony involving an act of fraud,
3 dishonesty, a breach of trust, or money laundering, by pleading guilty on or around August 14, 2007
4 to Robbery, a felony. Upshur received a five year-sentence, suspended all but three years, and two
5 years of probation upon release.

6 2. Furthermore, on or around October 13, 2011, Upshur was convicted of Violation of
7 Probation and sentenced to two years, concurrent with any other outstanding or unserved sentence,
8 belying the minimum requirement under Financial Code section 50141, subdivision (a)(3), that
9 Upshur demonstrate such financial responsibility, character, and general fitness as to command the
10 confidence of the community and to warrant a determination that the mortgage loan originator will
11 operate honestly, fairly, and efficiently within the purposes of this division.

12 **II.**
13 **Application**

14 3. On or around December 16, 2019, Upshur filed an application for an MLO license
15 with the Commissioner by submitting a Form MU4 through the Nationwide Mortgage Licensing
16 System (NMLS) (hereinafter, Application) pursuant to Financial Code section 50140.

17 4. Disclosure Question (F)(1) in the Application asked, “Have you ever been convicted
18 of or pled guilty or nolo contendere (‘no contest’) in a domestic, foreign, or military court to any
19 felony?” Upshur answered, “Yes.”

20 5. Upshur submitted through NMLS a document from the Circuit Court for Baltimore
21 County, Maryland, disclosing that on or around October 13, 2011, Upshur was found guilty of
22 violating probation in the matter of *State of Maryland v. Alan J. Upshur* (Case No. 03-K-07-
23 001444) (Criminal Case), in which he was convicted of Robbery in violation of Maryland Criminal
24 Statute section 3.402.

25 **III.**
26 **Felony Criminal Convictions**

27 6. On or around April 4, 2007, the State’s Attorney for Baltimore County, Maryland,
28 filed a criminal information charging four counts, stating in Count One that on or about January 9,

1 2007, in Baltimore County, Upshur “did unlawfully and feloniously rob . . . of silver Weimar
2 trumpet and US currency . . . (Robbery, Criminal Law Article 3-402, 2 0700).”¹

3 7. On or around August 14, 2007, Upshur pleaded guilty to Robbery, a felony, and was
4 sentenced to five years, suspending all but three years, and placed on probation for two years upon
5 release. In addition, Upshur was ordered to pay restitution to two victims.

6 8. On or around January 3, 2011, Upshur was charged with Violation of Probation in
7 the Criminal Case for violating multiple conditions of probation, including but not limited to
8 obeying all laws and notifying his supervising agent at once if charged with a criminal offense,
9 including jailable traffic offenses.

10 9. On or around June 7, 2011, Upshur was found guilty of Assault-Second Degree,
11 Reckless Endangerment, and Dangerous Weapon: Conceal.

12 10. On October 13, 2011, Upshur pleaded guilty to Violation of Probation in the
13 Criminal Case and was sentenced to two years concurrent with any other outstanding or unserved
14 sentence beginning on October 13, 2011.

15 **IV.**
16 **Applicable Law**

17 11. Financial Code section 50141 provides in relevant part:

18 (a) The commissioner **shall deny** an application for a mortgage loan
19 originator license unless the commissioner makes **at a minimum the**
20 **following findings:** . . .

21 (2) (A) The applicant has not been **convicted** of, or **pled guilty** or nolo
22 **contendere** to, a **felony** in a domestic, foreign, or military court . . . **at any**
23 **time preceding the date of application**, if such felony involved an act of
24 fraud, **dishonesty**, a breach of trust, or money laundering. Whether a

24 ¹ Md. Code Ann., Crim. Law § 3-402 provides in relevant part: “Prohibited (a) A person may not commit or attempt to
25 commit robbery. Penalty (b) A person who violates this section is guilty of a **felony** and on conviction is subject to
26 imprisonment not exceeding 15 years.” (Md. Code Ann., Crim. Law § 3-402.) (Emphasis applied.)

27 “Robbery is a crime in Maryland under the common law. It is not defined by statute but the penalty is fixed by
28 statute . . . It thus retains its common law definition—‘the **felonious taking and carrying away** of the personal property
of another, from his person or in his presence, by violence, by putting him in fear.’” (*Darby v. State* (Md. Ct. Spec.
App. (1968) 3 Md.App. 407, 413.) (Emphasis applied.)

“Robbery’ retains its judicially determined meaning except that: (1) robbery includes obtaining the service of
another by force or threat of force; and (2) robbery requires proof of intent to withhold property of another: (i)
permanently; (ii) for a period that results in the appropriation of a part of the property's value; (iii) with the purpose to
restore it only on payment of a reward or other compensation; or (iv) to dispose of the property or use or deal with the
property in a manner that makes it unlikely that the owner will recover it.” (Md. Code Ann., Crim. Law § 3-401(e).)

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particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted . . .

(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 (Emphasis applied.)

V.
Conclusion

The Commissioner finds that Upshur does not meet the following minimum requirements for issuance of a mortgage loan originator license: (i) Financial Code section 50141, subdivision (a)(2), which requires that Upshur has not been convicted or pleaded guilty to a felony at any time preceding the date of the Application if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering,² and (ii) Financial Code section 50141, subdivision (a)(3), which requires that Upshur has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that Upshur will operate honestly, fairly, and efficiently within the purposes of the CRMLA.

Having found that Upshur pleaded guilty to Robbery, a felony involving an act of dishonesty preceding the date of the Application, and that Upshur pleaded guilty to Violation of Probation, belying the character and general fitness 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 CRMLA, the Commissioner shall deny Upshur’s application for a mortgage loan originator license.

By reason of the foregoing, pursuant to Financial Code section 50141, subdivision (a)(2) and

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² See *People v. Rodriguez* (1986) 177 Cal.App.3d 174, 178 (“Since **robbery** and burglary each necessarily involve a specific intention to commit a theft, or in the case of burglary, a theft or a felony within a protected structure, each involves elements of **dishonesty** and a readiness to do evil.”) See also *People v. Brown* (1985) 169 Cal.App.3d 800, 806 (“Like theft . . . receiving stolen property . . . and extortion . . . **robbery involves intentional dishonesty** for the purpose of personal gain.” (internal citations omitted).) (Emphasis applied.)

1 (a)(3), the Commissioner shall deny Alan J. Upshur’s application for a mortgage loan originator
2 license.

3 WHEREFORE IT IS PRAYED that the mortgage loan originator application filed by Alan J.
4 Upshur be denied.

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6 Dated: August 4, 2020
7 Los Angeles, California

8 MANUEL P. ALVAREZ
9 Commissioner of Business Oversight

10 By _____
11 SOPHIA C. KIM
12 Senior Counsel
13 Enforcement Division
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