

**BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues against:

GLORIA MARIA ANDIA DOCHERTY, Respondent

NMLS NO.: 484162

OAH No. 2019080848

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on January 22, 2020, in Los Angeles, California.

Complainant Manuel P. Alvarez, Commissioner of Business Oversight (Commissioner), was represented by Danielle A. Stoumbos, Senior Counsel, Department of Business Oversight (Department).

Respondent Gloria Maria Andia Docherty was present represented herself.

During the hearing a motion was made to seal exhibit 21, which was granted. A separate order will issue sealing that exhibit. Respondent's driver's license number was redacted from exhibit 16 by the ALJ after the case was submitted.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 22, 2020.

SUMMARY OF THE CASE

Respondent applied for a mortgage loan originator (MLO) license on November 30, 2018. The Department gave notice that it intended to deny her application, on the grounds that she had failed to make accurate disclosures in her application, and that she later made a false statement regarding the facts and circumstances. Further, after a hearing, the Department of Real Estate had denied an application by Respondent to that agency for an MLO because she had not disclosed material matters.

In this case, the evidence establishes that Respondent failed to make disclosures, or made false statements in her application and in the subsequent process. The Commissioner is justified in his action, and Respondent's application will be denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant filed and maintained the Statement of Issues in his official capacity as Commissioner of Business Oversight.
2. On November 30, 2018, Respondent Gloria Maria Andia Docherty, who has been known as Gloria Andia, submitted an application to the Department for an MLO license (Application).
3. On July 12, 2019, Counsel for the Commissioner served Respondent with a notice of the Commissioner's intention to deny the Application and the Statement of

Issues. Thereafter, Respondent requested a hearing, and this proceeding ensued. All jurisdictional requirements have been met.

Respondent's 2018 MLO License Application to the Department

4. (A) Respondent submitted the Application through the Nationwide Multistate Licensing Service (NMLS). On the Application she answered "no" to the following two questions.

(B) Question H asked if Respondent had ever "been convicted of or pled guilty or nolo contendere ('no contest') in a domestic, foreign, or military court to committing or conspiring to commit a misdemeanor involving . . . (ii) fraud, (iii) false statements or omissions, (iv) theft or wrongful taking of property . . ." (Ex. p. DBO 40.)¹

(C) Question N inquired as to whether there was any "pending regulatory action proceeding against you for any alleged violation described in [questions] (K) through L?" (*Ibid.*) In turn, question K inquired if any state, or federal regulatory agency ever found that Respondent had made a false statement or had been dishonest or had ever denied Respondent's application for licensure, or entered any orders concerning her in connection with any license or registration.

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¹ Complainant's exhibits were "Bates stamped" with page numbers beginning with the letters DBO. Hereafter page citations to Complainant's exhibits will be to the number alone.

5. As found hereafter, Respondent had suffered a criminal conviction involving fraud, false statements, and omissions, and there was, at the time of her Application, a pending regulatory action to deny a license to Respondent.

The Fraud Conviction

6. In April 1995, in the Municipal Court, County of Orange, Respondent was convicted of violating California Welfare and Institutions Code section 10980, subdivision (c)(2), a misdemeanor. By violating that statute, she was guilty of willfully and knowingly, with the intent to deceive by means of false statement or representation, or by failing to disclose a material fact, and thereby obtaining aid for herself or a child not entitled to the aid. She was sentenced to 36 months of probation and ordered to pay restitution in the amount of \$440. It is reasonably inferred that probation was informal.

The Department of Real Estate's Denial of Respondent's Application for an MLO License and Hearing Thereon

7. On or about September 6, 2017, Respondent applied to the Department of Real Estate (DRE) for a MLO license endorsement. She had been licensed by the DRE as a salesperson in July 2017, even though she had not disclosed her 1995 conviction in her salesperson's license application.

8. When she applied to DRE for an MLO license endorsement, Respondent did not disclose her 1995 conviction, answering question H with a "No." The DRE was aware of her conviction from the salesperson's licensing process, and the DRE filed a statement of issues so as to deny Respondent's MLO application. Further, the DRE proceeding alleged that her application should be denied because Respondent had filed bankruptcy in 2014 and had had a civil judgment against her.

9. The DRE statement of issues was filed on November 6, 2018. The DRE served its statement of issues on Respondent at her address in Newport Beach, and it served her prospective employing broker, Vadim Danilin, as well. The DRE's statement of issues was delivered to Respondent's Newport Beach address on November 10, 2018. (Ex. 15, pp. 115, 117.) Although Respondent has claimed that she did not know of the DRE proceeding because it wasn't served at her correct address, Respondent had given notice to the DRE that her new address of record was the address in Newport Beach; that notice was given to the DRE in an electronic filing made October 3, 2018. (Ex. 14.)

10. (A) Respondent served her Notice of Defense on the DRE by facsimile transmission on November 19, 2018. This indicates that she did receive the DRE's statement of issues at her address in Newport Beach.

(B) On November 20, 2018, Respondent wrote a three page "Statement of Response" and submitted it to the DRE, which received the document on November 21, 2018. In that document Respondent states that she had had no memory of the conviction, and that she tried to get information about it; it appears she was referring to the period in 2017 when she was trying to obtain her salesperson's license. She did, however, explain the circumstances of the crime as a problem with child support from her ex-husband.

11. A hearing on the DRE's statement of issues was held on March 12, 2019, at OAH, by ALJ Eric Sawyer. He issued a proposed decision on April 2, 2019. The DRE adopted the proposed decision on May 6, 2019, giving the decision an effective date of May 29, 2019.

12. Judge Sawyer found that the evidence established that Respondent had been convicted of welfare fraud, had engaged in serial failures to disclose the criminal conviction on license applications, and that she had failed to demonstrate financial responsibility, which warranted denial of her application.²

13. (A) The DRE's action was pending against Respondent prior to the time she filed the Application with the Department. Respondent knew of the pendency of the DRE action on November 10, 2018, when she was served, and her filing of a notice of defense nine days later proves she had knowledge that there was a regulatory action pending against her, which action raised claims relating to false statements, and which sought to deny her a license. And, her November 20, 2018 Statement of Response indicates that she knew some of the details of the underlying criminal proceeding.

(B) Respondent's answer to question N in her November 30, 2018 Application, to the effect there were no regulatory proceedings against her, was false.

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² As set forth below, Respondent had failed to disclose the fraud conviction to the DRE when she applied for her real estate salesperson's license, and she failed to disclose it to the Department in 2017 when she applied for and obtained an MLO license

The Civil Court Judgement Obtained by the Employment Development Department Against Respondent

14. In 2010, the California Employment Development Department (EDD) obtained a judgment in the Superior Court of California, County of Sacramento, against Respondent for \$5,602.78. Respondent paid the judgment in August 2012.

15. The evidence was not sufficient to establish why the EDD was able to obtain a judgment against Respondent. Complainant alleged that it was related to unemployment insurance obtained by Respondent, but there was no substantial evidence to support that claim. At hearing, Complainant's counsel pointed to a finding by ALJ Sawyer in the DRE proceeding. However, the foundation for that finding—testimony from a DRE investigator about the basis for the judgement—lacked foundation. Complainant could not produce the underlying civil complaint, and thus the reason for the claim and judgment was not established.

Respondent's License Applications Predating the Application to the Department

16. As noted above, Respondent applied for a real estate salesperson's license from the DRE in late May 2017. The application asked if she had ever been convicted of a misdemeanor, and Respondent answered "no."

17. As set forth above, that answer was false in light of her 1995 misdemeanor conviction. The DRE, on June 15, 2017, wrote to Respondent and asked why the prior conviction had not been disclosed in her application to become a licensed real estate salesperson. In response, Respondent submitted an updated Interview Information Statement to DRE. That document was submitted on or about

June 20, 2017, and it set out information about the fraud conviction in some detail. Her response, in part, identified the court as being in Laguna Niguel. She stated that she had not remembered the case until the DRE staff raised the matter. She claimed she was never arrested or notified to appear. She stated that the matter arose from support issues with her ex-husband. (See ex. 12, pp. 86-87.) Notwithstanding the lack of disclosure, the DRE issued a salesperson's license to Respondent. It is inferred that given the passage of time from the conviction (1995) to the application (2017), the matter was not deemed material.

18. The significance of this matter to this proceeding is that by the time that Respondent applied to the DRE for an MLO endorsement, and to the DRE for an MLO license, her faulty memory had been jogged by the June 2017 interaction with the Department. That is, even if it was true that she had forgotten about her 1995 conviction for welfare fraud—an assertion not accepted here—she had had a forceful reminder of it. Somehow, however, her memory once again faded between June 2017 and the fall of 2018, when she sought licensure from the Department.

19. In February 2017, Respondent submitted an application for an MLO license to the Department through the HMLS. At that time, Respondent answered question H—pertaining to prior criminal convictions—“No.” As established above, that answer was false in light of her 1995 conviction for welfare fraud. The Department did not learn of that conviction, and it issued her an MLO license. That license expired on January 1, 2018.

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Respondent's False Statement to the Commissioner in May 2019

20. On May 17, 2019, prior to the Commissioner giving Respondent notice of his intent not to issue her an MLO license, Respondent emailed Complainant's attorney. In that email, she took the position that she did not disclose the DRE proceeding because she had not received the DRE's statement of issues before she applied to the Department for an MLO. She claimed that DRE mailed the documents to her old address in Irvine, California, and not to her address in Newport Beach. She maintained that position in the hearing in this matter.

21. As established in Factual Findings 7 through 13, that claim is false. She not only received the DRE statement of issues before she filed the Application with the Department, she had filed her notice of defense and separate statement in response to the DRE's filing before she submitted her Application to the Department.

Other Matters

22. Respondent has worked for many years performing loan transactions. There is no evidence that she does not have the core competency to act as a MLO licensee, at least in terms of the transactional side of the business.

23. The Department's sole witness, Geraldine Young, was credible in her testimony, both in terms of demeanor and the internal consistency of her testimony. Respondent's credibility suffered, both in terms of her demeanor, and the content of her testimony. In terms of demeanor, she blamed others, emotionally claiming that the DRE investigator was unfair, and claiming despite evidence to the contrary, that she did not disclose her 1995 conviction because she forgot about it. The ALJ finds it difficult to believe that someone forgets a criminal proceeding.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter pursuant to the California Financing Law (CFL), Financial Code section 22000 et seq.³ was established based on Factual Findings 1 through 3.

2. Pursuant to section 22172, subdivision (a), the Commissioner may deny an MLO license for violations of the CFL, or for failing to meet the requirements of sections 22109.1 or 22109.4, or for making material misstatements or omissions of material information in a license application.

3. Cause exists to deny Respondent's Application because she has knowingly made false statements of material fact, and she has withheld information in the course of her application and in the application process, in violation of sections 22170, subdivisions (a) and (b), and 22172, subdivision (a)(1) and (2), based on Factual Findings 2, 4 through 13, and 16 through 19.

4. Cause exists to deny Respondent's Application because Respondent does not meet the minimum requirements for the issuance of an MLO license as provided by section 22109.1, primarily because of her repeated failure to disclose her 1995 fraud conviction to the Department and to the DRE, and her failure to disclose the DRE MLO endorsement proceeding to the Department. That conduct, taken together with the misdemeanor judgement is cause to find she does not meet the minimum requirements. If Respondent had disclosed her conviction to the Department and DRE, she might have pointed to the passage of nearly 23 years as evidence of rehabilitation,

³ All further statutory citations are to the Financial Code.

because a significant indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991; *Martin B. v. Committee of Bar Examiners* (1983) 33 Cal.3d 717, 726 [nine years of unblemished behavior sufficient, in itself, to show rehabilitation].) Here she engaged in misconduct by claiming not to remember a conviction brought to her attention by the DRE in June 2017, and by claiming ignorance of the 2018 DRE proceeding even though she had responded to it before submitting the Application. In these circumstances, it cannot be found that Respondent demonstrated financial responsibility, character, and general fitness necessary to command the confidence of the community and to warrant a determination that she would operate honestly, fairly, and efficiently as mortgage loan originator under the CFL and section 22109.1, subdivision (a)(3). This Conclusion is based on Factual Findings 2, 4 through 13, 16 through 21, and 23.

5. Based on all the foregoing, Respondent's Application for an MLO license must be denied.

ORDER

The Application of Gloria Maria Andia Docherty for mortgage loan originator license is denied.

DATE: February 21, 2020

DocuSigned by:
Joseph D. Montoya
JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings

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NMLS No.: 484162

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GLORIA MARIA ANDIA DOCHERTY,
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated February 21, 2020, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on

June 18, 2020

IT IS SO ORDERED this

19th

day of

May, 2020



/s/

MANUEL P. ALVAREZ

Commissioner of Business Oversight