BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

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| In the Matter of:<br><br>THE COMMISSIONER OF BUSINESS OVERSIGHT,<br><br>               Complainant,<br><br>    v.<br><br>KELLY THUY LE,<br><br>               Respondent. | OAH No. 2019100440<br><br><br>**ORDER OF DECISION** |

The attached Proposed Decision of the Office of Administrative Hearings is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on July 8, 2020. IT IS SO ORDERED this 1st day of July, 2020.

/s/
_____
Manuel P. Alvarez
Commissioner of Business Oversight

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

In the Matter of:

THE COMMISSIONER OF BUSINESS OVERSIGHT,

Complainant,

v.

KELLY THUY LE,

Respondent.

NMLS No. 1853489

OAH No. 2019100440

### PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on March 12, 2020, in Los Angeles.

Danielle A. Stoumbos, Senior Counsel, represented complainant.

Kelly Thuy Le (respondent) represented herself. Pursuant to Government Code section 11430.30, the parties consented to respondent participating in the hearing by telephone.

The record remained open after the conclusion of the hearing for respondent to submit character reference letters and for complainant to respond. The parties timely did so, as described in the ALJ's order closing the record and submitting the matter for decision on March 16, 2020.

## STATEMENT OF THE CASE

The Commissioner of Business Oversight (complainant) brings this Statement of Issues to deny respondent's Mortgage Loan Originator (MLO) license application. No license was issued because respondent misrepresented in her application that: she was unemployed from November through December of 2016, she had never been terminated from employment, and did not have any misdemeanor theft convictions. Respondent admits she made those misrepresentations, but offers an excuse for doing so. She also contends her history of unblemished work in the financial industry, successful completion of her criminal probation terms, and positive character reference letters, demonstrate she should receive an MLO license.

## ISSUE

Pursuant to Financial Code section 50141, subdivision (a)(3), should respondent's application for an MLO license be denied because she failed to demonstrate such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that she would, if licensed, operate honestly, fairly, and efficiently?

# SUMMARY

Respondent worked at a medical spa from January through December of 2016. She was terminated from that job and arrested in December of 2016 for stealing from her employer. In 2018 she was convicted of two misdemeanor counts of grand theft arising from her theft at work. Respondent failed to disclose those events in her initial application for an MLO license, and again omitted her termination from work in an amended application. Respondent has not fully accepted responsibility for her actions and presented insufficient evidence of rehabilitation. Because respondent failed to meet her burden of demonstrating such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that she will operate honestly, fairly, and efficiently, her application is denied.

# FACTUAL FINDINGS

## Jurisdictional Matters

1.      Complainant, as the head of the Department of Business Oversight (Department), is authorized to administer and enforce the provisions of the California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) and the rules and regulations promulgated thereunder.

2.      As described in more detail below, on May 22, 2019, respondent applied to the Department for an MLO license. She subsequently submitted three revised applications. No license was issued.

3.      On September 13, 2019, complainant brought the Statement of Issues against respondent, alleging grounds exist to deny her application. On or about

October 4, 2019, respondent timely submitted a Notice of Defense, which contained a request for a hearing. (Exs. 1 & 2.)

## Respondent's Background as Relevant to the Issue

4.      From January through December of 2016, respondent worked at a medical spa in Orange County, California. (Ex. 9.)

5.      On December 12, 2016, the medical spa terminated respondent after it was discovered that she had stolen a significant amount of cash. (Ex. 9.) Respondent also was arrested for grand theft at or about that time. (*Ibid.*)

6.      On February 2, 2018, respondent, in the Superior Court of the State of California, Orange County, plead guilty to, and was convicted of, two misdemeanor counts of grand theft in violation of Penal Code section 487, one count for each of subdivisions (a) and (b)(3). Respondent was sentenced to three years of informal probation, under terms including that she pay $7,500 in restitution and serve 10 days in jail. The court stayed the jail time pending successful completion of eight days of Cal Trans community service. (Ex. 8.)

7.      Respondent failed to complete the Cal Trans community service. On October 26, 2018, she was arrested and ordered to serve one day in jail in lieu of the Cal Trans community service. (Ex. 8.)

8.      Respondent remains on probation. She has completed her restitution and Cal Trans community service obligations, and is otherwise in compliance with her other probation terms. (Ex. 8.)

## Respondent's Initial Application

9.　On May 22, 2019, respondent filed with the Department, through the Nationwide Multistate Licensing System (NMLS), an application seeking an MLO license. (Ex. 3.)

10.　The "Employment History" section of the application requires applicants to disclose all prior employers. Respondent represented that she was unemployed from November 2016 through December 2016. That representation was false, in that respondent failed to disclose her employment at the medical spa from January 2016 through December of 2016.

11.　Item H1 of the "Disclosure Questions" section of the application, concerning criminal records, asks applicants, "Have you 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 misdemeanor involving: (i) financial services or a financial services-related business, (ii) fraud, (iii) false statements or omissions, (iv) theft or wrongful taking of property, (v) bribery, (vi) perjury, (vii) forgery, (viii) counterfeiting, or (ix) extortion?" Respondent answered "No." That representation was false, in that respondent failed to disclose her February 2018 misdemeanor convictions for grand theft.

12.　Item Q2 of the "Disclosure Questions" section of the application, concerning employment termination, asks applicants, "Have you ever voluntarily resigned, been discharged, or permitted to resign after allegations were made that accused you of . . . fraud, dishonesty, theft or the wrongful taking of property?" Respondent answered "No." That representation was false, in that respondent failed to disclose her December 2016 termination from the medical spa for stealing money.

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13. The attestation clause in the application states, "[i]f the Applicant has knowingly made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied." (Ex. 4.)

14. Respondent verified, under penalty of perjury, that the application was correct on May 21, 2019, and filed the application with the Department on May 22, 2019. (Ex. 4.)

## Respondent's Amended Applications

15. On May 31, 2019, respondent filed an amended application to change her response to Item H1, concerning misdemeanor convictions, from "No" to "Yes." (Ex. 5, p. 6.) Respondent added that the misdemeanor convictions occurred because she was "in the wrong place at the wrong time and I was young." (*Id.*, p. 7.) However, respondent failed to disclose that she had been employed by the medical spa and that she had been terminated by that employer due to theft. (Ex. 5.)

16. On June 4, 2019, Gurpreet Mann, an examiner with the Department, created a licensing item in the NMLS, instructing respondent to correct her responses to the "Disclosure Questions" section of the application; explain, in detail, her misdemeanor convictions; upload any applicable legal documentation to the NMLS; and explain why she had not disclosed her arrests in December 2016 for stealing from her employer and in October 2018 for failing to complete her Cal Trans community service. (Ex. 6.)

17. On June 14, 2019, respondent filed another amended application. (Ex. 7.) Respondent disclosed that she stole from her employer, was convicted of misdemeanor grand theft, and was terminated from employment. Respondent

explained that she stole from her employer because her younger sister was "extremely sick with Cerebral Palsy and at the time my family and I did not have the funds for treatment." (*Id.*, p. 8.) Respondent also wrote that she failed to disclose those events in her initial application because, "I thought according to my lawyer it [the conviction] was expunged. I also thought according to the SAFE ACT a misdemeanor was fine." (*Id.*, p. 7.)

18.     On June 21, 2019, Examiner Mann created another licensing item in the NMLS, instructing respondent to correct the "Employment History" section of her application to make it consistent with her newly added disclosures. (Ex. 6, p. 1.)

19.     On June 21, 2019, respondent filed another amended application. (Ex. 9.) In the "Employment History" section, respondent disclosed that she had worked for the medical spa in question from January through December 2016. (*Id.*, p. 5.)

## Respondent's Evidence

20.     Respondent testified that she has worked for several employers in the financial industry without incident since June 2018. While no evidence was presented casting doubt on respondent's testimony, it is also noted that respondent presented no documentation (including reference letters) from any of those employers.

21.     Respondent submitted character reference letters from two former high school teachers. (Ex. A.) As complainant argues, the letters have slight probative value, because respondent was in high school many years before the events in question, and neither author indicates any more recent contacts with respondent. (Ex. B.)

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22.    Respondent testified she has obtained MLO licenses in three other states through the NMLS. However, it is unknown whether the licensing agencies in the other states discovered respondent's omissions that Examiner Mann found.

23.    A. During the hearing, respondent provided excuses for her above-described omissions from her application, none of which are convincing.

B. Respondent testified that she omitted her convictions because her criminal defense attorney told her they would be expunged. That testimony is problematic because respondent did not testify that her attorney also told her she could omit her convictions from any application asking about them; and, more importantly, her convictions have not been expunged. In any event, this excuse does not explain why respondent also failed to disclose that she had worked for, and been fired by, the medical spa, which facts have nothing to do with expunged convictions.

C. Respondent also testified that she assumed the financial institutions that have already hired her performed background checks and did not learn of her convictions. From this respondent assumed her convictions had in fact been expunged and that she no longer has a criminal history. That testimony is also problematic. First, it is unknown whether respondent's past employers performed a criminal history search for her. Second, respondent basically admitted that she consciously omitted her criminal history because she did not think anyone would find it.

## PRINCIPLES OF LAW

1.    Respondent bears the burden of proving she meets all the prerequisites necessary for the requested license. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221.) This burden requires proof by a preponderance of the

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evidence. (Evid. Code, § 115.) A preponderance of the evidence means that respondent's evidence must have more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2.      Financial Code section 50141 provides 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.

## ANALYSIS

3.      In this case, it was established that respondent stole from an employer, was fired and thereafter convicted for doing so, and made several misrepresentations about those events in her initial application for an MLO license. Even after Examiner Mann advised respondent of problems in her application, respondent filed amended applications which still did not fully disclose all required information. Respondent submitted insufficient evidence of rehabilitation, and to this day, still fails to accept full responsibility for her crimes and offers excuses for her application omissions.

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# LEGAL CONCLUSION

4.    Respondent failed to meet her burden of demonstrating the financial responsibility, character, and general fitness necessary to command the confidence of the community and to warrant a determination that she will operate honestly, fairly, and efficiently as an MLO licensee under Financial Code section 50141, subdivision (a)(3). Therefore, the order below is warranted. (Factual Findings 1-23; Principles of Law; Analysis.)

# ORDER

The application for a mortgage loan originator license filed by respondent Kelly Thuy Le is denied.

DATE: March 27, 2020

DocuSigned by:

/s/

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings