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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)	ORDER DENYING APPLICATION FOR
13	OVERSIGHT,)	MORTGAGE LOAN ORIGINATOR
14	Complainant,)	LICENSE
15	v.)	
16	ALAN J. UPSHUR,)	
17	Respondent.)	
18)	
19)	

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24 The Complainant, the Commissioner of Business Oversight (Commissioner), of the
25 Department of Business Oversight (Department) finds that:

26 1. On or around December 16, 2019, Alan J. Upshur (Upshur) filed an application for a
27 mortgage loan originator (MLO) license with the Commissioner by submitting a Form MU4
28 through the Nationwide Mortgage Licensing System (NMLS) (hereinafter, Application) pursuant to

1 Financial Code section 50140 of the California Residential Mortgage Lending Act (Fin. Code §
2 50000 *et seq.*) (CRMLA).

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

6 3. On or around April 4, 2007, the State’s Attorney for Baltimore County, Maryland,
7 filed a criminal information charging four counts, stating in Count One that on or about January 9,
8 2007, in Baltimore County, Upshur “did unlawfully and feloniously rob . . . of silver Weimar
9 trumpet and US currency . . . (Robbery, Criminal Law Article 3-402, 2 0700)”¹ (Criminal Case).

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

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

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

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

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

25 “Robbery is a crime in Maryland under the common law. It is not defined by statute but the penalty is fixed by
26 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 force, or by putting him in fear.’” (*Darby v. State* (Md. Ct. Spec.
App. (1968) 3 Md.App. 407, 413.) (Emphasis applied.)

27 “‘Robbery’ retains its judicially determined meaning except that: (1) robbery includes obtaining the service of
28 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).)

1 8. Financial Code section 50141 provides in relevant part:

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

5 (2) (A) The applicant has not been *convicted* of, or *pled guilty* or nolo
6 contendere to, a *felony* in a domestic, foreign, or military court . . . *at any*
7 *time preceding the date of application*, if such felony involved an act of
8 fraud, *dishonesty*, a breach of trust, or money laundering. Whether a
9 particular crime is classified as a felony shall be determined by the law of
10 the jurisdiction in which an individual is convicted . . .

11 (3) The applicant has demonstrated such financial responsibility,
12 character, and general fitness as to command the confidence of the
13 community and to warrant a determination that the mortgage loan
14 originator will operate honestly, fairly, and efficiently within the purposes
15 of this division (Emphasis applied.)

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

25 10. On August 4, 2020, the Commissioner issued to Upshur a Notice of Intention to Deny
26 Application for Mortgage Loan Originator License, Statement of Issues, and accompanying
27 documents (Notice of Intention to Deny) based on the above findings. On or around August 13,
28 2020, the Commissioner served Upshur with the Notice of Intention to Deny via regular U.S. mail
and certified mail, return receipt requested, at Upshur’s mailing address on file with the

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.)

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Commissioner. Upshur did not request a hearing and the time to request a hearing has expired.

NOW GOOD CAUSE APPEARING THEREFOR, it is hereby ordered that the Application filed by Alan J. Upshur for a mortgage loan originator license is denied. This order is effective as of the date hereof.

Dated: September 2, 2020
Los Angeles, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division