

MARY ANN SMITH
Deputy Commissioner
SEAN M. ROONEY
Assistant Chief Counsel
SAMUEL J. PARK (State Bar No. 293902)
Counsel
Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
Los Angeles, California 90013
Telephone: (213) 576-7683
Facsimile: (213) 576-7181

Attorneys for Complainant

BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
OF THE STATE OF CALIFORNIA

In the Matter of:)	NMLS NO.: 354101
THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION,)	STATEMENT OF ISSUES
Complainant,)	
v.)	
BRYNN GARRETT DOWNEY,)	
Respondent.)	

The Commissioner of Financial Protection and Innovation (Commissioner) is informed and believes, and based upon such information and belief, alleges and charges Respondent as follows:

I.

Jurisdiction

1. The Commissioner has jurisdiction over the licensing and regulation of persons engaged in the business of making or brokering residential mortgage loans, including mortgage loan originators, under the California Financing Law (CFL) (Fin. Code, § 22000 et seq.). The Commissioner also has jurisdiction over the licensing and regulation of persons engaged in the business of making or servicing residential mortgage loans, including mortgage loan originators, under the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.).

2. On November 4, 2019, Respondent Brynn Garrett Downey (Downey) applied to the

1 Commissioner for a mortgage loan originator (MLO) license under the CFL and CRMLA.

2 3. The Commissioner brings this action to deny the issuance of an MLO license to
3 Downey under Financial Code sections 22109.1, 22172, 50141, and 50513 because Downey: (1)
4 was convicted of felonies involving an act of fraud, dishonesty, a breach of trust, or money
5 laundering; (2) withheld information and made material misstatements in his application for a
6 license; (3) has not demonstrated such financial responsibility, character, and general fitness as to
7 command the confidence of the community and to warrant a determination that he will operate
8 honestly, fairly, and efficiently as an MLO; and (4) is not employed by or subject to the supervision
9 of a lender, broker, or servicer licensed under the CFL or CRMLA.

10 **II.**

11 **Statement of Facts**

12 4. To become licensed by the Commissioner as an MLO, an individual must submit a
13 uniform application form (known as the MU2 or MU4 form) through the Nationwide Mortgage
14 Licensing System and Registry (NMLS).

15 5. On November 4, 2019, Downey applied for an MLO license by filing a Form MU4
16 through NMLS. His application was not sponsored by a lender, broker, or servicer licensed under
17 the CFL or CRMLA.

18 6. Form MU4 question (F)(1) asked: “Have you ever been convicted of or pled guilty
19 or nolo contendere (‘no contest’) . . . to any felony?”

20 7. Downey answered “Yes” to question (F)(1).

21 8. In the event explanation for question (F)(1), Downey stated that in 1996, he was
22 “convicted of a Marijuana charge.” Downey did not provide supporting documents for his
23 explanation.

24 9. On November 5, 2019, Downey filed an amended Form MU4 with minor clerical
25 changes.

26 10. On December 17, 2019, the Commissioner placed license items on Downey’s NMLS
27 account, noting that Downey had answered “Yes” to Form MU4 question (F)(1) but did not provide
28 supporting documents and an adequate explanation. The Commissioner requested that Downey file

1 an amended application with a detailed explanation of the circumstances and upload any applicable
2 legal documents. The Commissioner also directed Downey to have a CFL- or CRMLA-licensed
3 company request sponsorship of his license.

4 11. On February 12, 2020, Downey filed an amended Form MU4 with minor clerical
5 changes.

6 12. On March 25, 2020, Downey filed an amended Form MU4 in which he amended his
7 event explanation for question (F)(1) and uploaded documents. In the amended event explanation,
8 Downey stated that in addition to the drug conviction he pleaded guilty to filing false tax returns.
9 Downey uploaded a copy of a 1996 criminal complaint and a related pre-indictment filing but did
10 not provide the judgment or another post-indictment filing reflecting his guilty plea or conviction.
11 The uploaded records referred only to the drug charge.

12 13. Records obtained from Downey and the Commissioner’s investigation show that on
13 May 12, 1997, Downey pleaded guilty to felony conspiracy to distribute and to possess with intent
14 to distribute marijuana in violation of title 21 United States Code sections 841(a)(1) and 846. In the
15 same proceeding, Downey also pleaded guilty to three counts of subscribing false tax returns in
16 violation of title 26 United States Code section 7206(1).

17 14. To date, Downey has not obtained sponsorship from a lender, broker, or servicer
18 licensed under the CFL or CRMLA.

19 **III.**

20 **Felony Convictions**

21 15. The Commissioner “shall deny” an application for an MLO license unless he makes,
22 at a minimum, specified findings, including that the applicant has not been convicted of, or pleaded
23 guilty or no contest to, a felony during the seven-year period preceding the date of the application,
24 or at any time preceding the date of the application, if such felony involved an act of fraud,
25 dishonesty, a breach of trust, or money laundering. (Fin. Code, §§ 22109.1, subd. (a)(2), 50141,
26 subd. (a)(2).)

27 16. As described in paragraph 13, Downey was convicted of three felony counts in 1997
28 for subscribing false tax returns with the Internal Revenue Service (IRS) in violation of title 26

1 United States Code section 7206(1).¹ Each felony involved an act of fraud and dishonesty. (See
2 Black’s Law Dict. (7th ed. 1999) p. 670 [defining fraud as “[a] knowing misrepresentation of the
3 truth or concealment of a material fact to induce another to act to his or her detriment”].)

4 17. Accordingly, before the date of his application, Downey was convicted of three
5 felonies involving an act of fraud, dishonesty, a breach of trust, or money laundering. Under
6 Financial Code sections 22109.1, subdivision (a)(2), and 50141, subdivision (a)(2), the
7 Commissioner must deny Downey’s application.

8 **IV.**

9 **Withheld Information and Material Misstatements**

10 18. The Commissioner may deny an application for an MLO license if the applicant
11 withholds information or makes a material misstatement in the application. (Fin. Code, §§ 22172,
12 subd. (a)(2), 50513, subd. (a)(2).)

13 19. As described in paragraphs 5 to 13, Downey withheld information regarding his
14 1997 felony convictions. Although Downey answered “Yes” to Form MU4 question (F)(1)
15 concerning felony convictions in his initial application, he explained only that he was convicted of a
16 “Marijuana charge” and failed to upload any relevant legal documents. Only after the
17 Commissioner asked Downey to explain in more detail the circumstances of his conviction did he
18 reveal that he pleaded guilty to other counts—filing false tax returns—in the same proceedings.
19 Even so, the supporting documents provided by Downey reflected only the drug conviction, not all
20 convictions.

21 20. Thus, Downey withheld information and made material misstatements in his
22 application for a license. Under Financial Code sections 22172, subdivision (a)(2), and 50513,
23 subdivision (a)(2), Downey’s application should be denied.

24 ///

25 ///

26
27
28 ¹ Section 7026(1) of title 26 of the United States Code, also known as the Internal Revenue Code, provides that any person who willfully “makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter” is guilty of a felony.

V.

Financial Responsibility, Character, and General Fitness

21. The Commissioner “shall deny” an application for an MLO license unless he makes, at a minimum, specified findings, including that 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 applicant will operate honestly, fairly, and efficiently as a mortgage loan originator. (Fin. Code, §§ 22109.1, subd. (a)(3), 50141, subd. (a)(3).)

22. As described in paragraphs 13 and 16, Downey was convicted in 1997 of felony drug conspiracy and multiple felony counts of making false or fraudulent statements to the IRS. Downey’s criminal history militates against finding that he has demonstrated the character and general fitness required for licensure as an MLO.

23. Further, as described in paragraphs 5 to 13 and 19, Downey withheld information regarding the 1997 felony convictions by failing to fully explain the circumstances of the convictions and failing to provide supporting documents that accurately reflected the convictions. Thus, although the criminal convictions occurred some time ago, Downey’s lack of candor in disclosing them further weighs against finding the requisite character and fitness.

24. For all these reasons, Downey has not demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that he will operate honestly, fairly, and efficiently as an MLO. Under Financial Code sections 22109.1, subdivision (a)(3), and 50141, subdivision (a)(3), Downey’s application must be denied.

VI.

Sponsoring Employer

25. The Commissioner “shall deny” an application for an MLO license unless he makes, at a minimum, specified findings, including that the applicant is employed by and subject to the supervision of a lender, broker, or servicer licensed under the CFL or CRMLA. (Fin. Code, §§ 22109.1, subd. (a)(6), 50141, subd. (a)(6).)

26. As described in paragraphs 5 and 14, Downey is not employed or sponsored by a

1 CFL-licensed lender or broker or a CRMLA-licensed lender or servicer.

2 27. Thus, Downey is not employed by or subject to the supervision of a lender, broker,
3 or servicer licensed under the CFL or CRMLA. Under Financial Code sections 22109.1,
4 subdivision (a)(6), and 50141, subdivision (a)(6), Downey’s application must be denied.

5 **VII.**

6 **Commissioner’s Authority to Deny Application**

7 28. Financial Code section 22109.1, subdivision (a), provides in relevant part:

8 The commissioner shall deny an application for a mortgage loan
9 originator license unless the commissioner makes, at a minimum, the
10 following findings:

11 ...

12 (2) (A) The applicant has not been convicted of, or pled guilty or nolo
13 contendere to, a felony in a domestic, foreign, or military court during
14 the seven-year period preceding the date of the application for licensing
15 and registration, or at any time preceding the date of application, if the
16 felony involved an act of fraud, dishonesty, or a breach of trust, or
17 money laundering. Whether a particular crime is classified as a felony
18 shall be determined by the law of the jurisdiction in which an individual
19 is convicted.

20 (B) For purposes of this paragraph, an expunged or pardoned felony
21 conviction shall not require denial of an application. However, the
22 commissioner may consider the underlying crime, facts, or
23 circumstances of an expunged or pardoned felony conviction when
24 determining the eligibility of an applicant for licensure under this
25 paragraph or paragraph (3).

26 (3) The applicant has demonstrated such financial responsibility,
27 character, and general fitness as to command the confidence of the
28 community and to warrant a determination that the mortgage loan
originator will operate honestly, fairly, and efficiently within the
purposes of this division.

...

(6) The applicant is employed by, and subject to the supervision of, a
finance lender or broker that has obtained a license from the
commissioner pursuant to this division.

29. Financial Code section 22172, subdivision (a), provides in relevant part:

The commissioner may do one or more of the following:

...

///

1 (2) Deny, suspend, revoke, condition, or decline to renew a mortgage
2 loan originator license if an applicant or licensee fails at any time to
3 meet the requirements of Section 22109.1 or 22109.4, or withholds
information or makes a material misstatement in an application for a
license or license renewal.

4 30. Financial Code section 50141, subdivision (a), provides in relevant part:

5 (a) The commissioner shall deny an application for a mortgage loan
6 originator license unless the commissioner makes at a minimum the
following findings:

7 ...

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

13 (B) For purposes of this paragraph, an expunged or pardoned felony
14 conviction shall not require denial of an application. However, the
commissioner may consider the underlying crime, facts, or
15 circumstances of an expunged or pardoned felony conviction when
determining the eligibility of an applicant for licensure under this
paragraph or paragraph (3).

16 (3) The applicant has demonstrated such financial responsibility,
17 character, and general fitness as to command the confidence of the
community and to warrant a determination that the mortgage loan
18 originator will operate honestly, fairly, and efficiently within the
purposes of this division.

19 ...

20 (6) The applicant is employed by, and subject to the supervision of, a
21 residential mortgage lender or servicer that has obtained a license from
the commissioner pursuant to this division.

22 31. Financial Code section 50513, subdivision (a), provides in relevant part:

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

24 ...

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

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VIII.

Prayer

For the foregoing reasons, the Commissioner finds that Brynn Garrett Downey was convicted of three felonies involving an act of fraud, dishonesty, a breach of trust, or money laundering before the date of his application for a mortgage loan originator license within the meaning of Financial Code sections 22109.1, subdivision (a)(2), and 50141, subdivision (a)(2).

The Commissioner also finds that Downey withheld information and made material misstatements in his application within the meaning of Financial Code sections 22172, subdivision (a)(2), and 50513, subdivision (a)(2).

The Commissioner also finds that Downey has not demonstrated the financial responsibility, character, and general fitness required under Financial Code sections 22109.1, subdivision (a)(3), and 50141, subdivision (a)(3).

Accordingly, the Commissioner must deny Downey’s application for a mortgage loan originator license.

WHEREFORE, IT IS PRAYED that Downey’s application for a mortgage loan originator license be denied.

Dated: December 18, 2020
Los Angeles, California

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

By: _____
SAMUEL J. PARK
Counsel
Enforcement Division