

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF BUSINESS
OVERSIGHT,

Complainant,

v.

CREDEO FINANCE, INC.,

Respondent.

Agency Case No. 60DBO-61880

OAH No. 2019080417


DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter, with technical or other minor changes on the attached Errata Sheet, pursuant to Government Code section 11517(c)(2)(C).

This Decision shall become effective on February 1, 2020.

IT IS SO ORDERED THIS 2nd day of January, 2020




MANUEL P. ALVAREZ *ML*
Commissioner of Business Oversight

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

In the Matter of the Order Imposing Penalty against:

CREDEO FINANCE, INC., Respondent

Agency Case No. 60DBO-61880

OAH No. 2019080417

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 10, 2019, in Los Angeles, California.

Vanessa T. Lu and Danielle Stoumbos, Co-Counsel with the Enforcement Division of the Department of Business Oversight (Department or DBO), appeared and represented complainant Manuel P. Alvarez, Commissioner of Business Oversight (Commissioner).

Paul Orloff, Chief Executive Officer of respondent Credeo Finance, Inc., appeared and represented respondent.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 10, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 26, 2019, complainant issued the Order Imposing Penalty Pursuant to Financial Code Section 22715 (Order Imposing Penalty) in his official capacity.
2. Respondent timely submitted an appeal of the Order Imposing Penalty and requested a hearing. OAH set the matter for hearing and notice was given as required by law.

Annual Report

3. On December 9, 2016, the Commissioner issued a Finance Lender and Broker License to respondent. On the same date, the Commissioner sent respondent a notice of "important information" about the requirements to maintain an active license, stating:

Each licensee is required to file an "annual report" by March 15th of each year, even if no business has been conducted with the license. Failure to file the report will result in the summary revocation of the license.

4. On April 12, 2017, respondent filed its first annual report reflecting no loan transactions during the 2016 calendar year. Although the annual report was not filed by the March 15, 2017 due date, the Commissioner imposed no penalty.

5. Effective January 1, 2018, the California Legislature enacted Financial Code section 22715 authorizing the Commissioner to impose a penalty against any licensee who fails to file an annual report by the due date. (See Legal Conclusions 1-3.)

6. On March 15, 2018, respondent filed its Annual Report for the 2017 calendar year. Because the annual report was filed on the due date, the Commissioner imposed no penalty.

7. On January 2, 2019, the Department issued an electronic notice to all licensees. The notice was successfully delivered to respondent at the email address furnished by respondent in its 2017 Annual Report. (Exhibit 6.) The notice was entitled "Reminder: 2018 Annual Report Available California Financing Law," and stated:

All licensees under California Financing Law must submit an Annual Report to the Commissioner of the Department of Business Oversight (DBO). The Annual Report form and instructions are now available on DBO's website [here](#). The deadline to submit the Annual Report electronically is **March 15, 2019**.

... We strongly encourage licensees to start gathering the data to ensure they can timely file the Annual Report.

Failure to submit the Annual Report by the deadline may result in money penalties pursuant to Financial Code section 22715(b).

(Exhibit 5, page DBO 00022, emphasis in original.)

8. On February 4, 2019, the Department issued a second electronic notice to all licensees in the same form and content as described above at Factual Finding 7. The notice was successfully delivered to respondent at the email address furnished by respondent in its 2017 Annual Report. (Exhibit 6.)

9. On March 5, 2019, the Department issued a third electronic notice to all licensees in the same form and content as described above at Factual Finding 7. The notice was successfully delivered to respondent at the email address furnished by respondent in its 2017 Annual Report. (Exhibit 6.)

10. As of the March 15, 2019 due date, respondent had not filed its 2018 annual report.

11. On March 18, 2019, the Department sent respondent an electronic notice entitled "FINAL NOTICE – Non-filing of CFL Annual Report for the year ending December 31, 2018." The notice was successfully delivered to respondent at the email address furnished by respondent in its 2017 Annual Report. (Exhibit 6.) The Final Notice stated:

Our records indicate that you have not filed the Annual Report for the year ended December 31, 2018 as required by Financial Code section 22159(a). . . .

Financial Code section provides the Commissioner with the authority (1) to assess penalties based on how late the licensee files the report and (2) to summarily revoke the license of any licensee who fails to file this report within 10 days after notice by the Commissioner that the report is due and has not been filed.

You are hereby notified that if your 2018 Annual Report is not completed and filed online on the DBO's website via the self-service portal by the close of business on Friday March 29, 2019, your license will be summarily revoked pursuant to Financial Code section 22715(a). . . .

Additionally, penalties are and will continue to accrue pursuant to Financial Code section 22715(b) until the Annual Report is filed.

(Exhibit 5, pages DBO 000228-229)

12. On March 29, 2019, respondent filed its 2018 Annual Report. The Annual Report was filed 10 business days after the March 15, 2019 due date and 11 calendar days after the date of the Commissioner's written demand described at Factual Finding 11, but within the due date set forth in the demand. Respondent reported the following financial data as of December 31, 2018: Cash on hand in the sum of \$20,196, net worth in the amount of \$238,752, net income of \$33,464, and no salaries paid.

13. The Commissioner did not summarily revoke respondent's license pursuant to Financial Code section 22715, subdivision (a). The Commissioner imposed a penalty in the sum of \$3,000, the maximum amount authorized by Financial Code section 22715, subdivision (b).

14. Mr. Orloff testified that the delay in filing the 2018 Annual Report was caused by the complexity of the very detailed reporting requirements and that additional time was necessary after preparing the organization's federal and state income tax returns. However, this testimony is disbelieved as "contradicted by inherent improbabilities as to its accuracy." (*Snell v. Telehala* (1969) 274 Cal.App.2d 61.)

Complainant presented printouts of respondent's online activity which reflected that respondent first logged on to the online portal to complete the Annual Report on March 26, 2019, eleven days after the due date. The Annual Report reflected 26 loans made or refinanced by respondent during the 2018 calendar year in the total principal amount of \$207,401. The Annual Report was completed three days after the first log on. These facts and circumstances do not support a finding that respondent's business and operations for 2018 were sufficiently complex to justify the delay.

15. Mr. Orloff also testified that the penalty amount is excessive and unduly punitive, that respondent is in the early stages of its business development, and that a \$3,000 penalty will impair its ability to pay salaries and wages. Although the penalty in the amount of \$3,000 is approximately 10 percent of respondent's net income for the year, the amount is 1.25 percent of respondent's net worth and within the limits authorized under Financial Code section 22715, subdivision (b). Accordingly, the Commissioner's assessment does not pose an undue hardship or exhibit an abuse of discretion.

LEGAL CONCLUSIONS

1. Financial Code section 22159 provides:

Each finance lender, broker, and program administrator licensee shall file an annual report with the commissioner, on or before March 15th, giving the relevant information that the commissioner reasonably requires concerning the business and operations conducted by the licensee or authorized by the program administrator licensee within the

state during the preceding calendar year for each licensed place of business.

2. The Commissioner may impose, by order, a penalty on any licensee who does not make and file with the Commissioner any report required by law within the time specified in any written demand of the Commissioner. (Fin. Code, § 22715, subd. (b)(1)(A).)

3. Financial Code section 22715, subdivision (b)(3), provides:

The amount of the penalty imposed pursuant to this subdivision shall not exceed one hundred dollars (\$100) for each business day for the first five business days the report or information is overdue, and thereafter shall not exceed five hundred dollars (\$500) for each business day the report or information is overdue, not to exceed twenty-five thousand dollars (\$25,000) in the aggregate.

4. In this case, respondent was required by law to file an Annual Report by Friday March 15, 2019. On March 18, 2019, the Commissioner issued a written demand in the form of a final notice directing respondent to file the required report no later than March 29, 2019. Respondent filed the report on Friday March 29, 2019, 10 business days after it was due.

5. The Commissioner imposed a penalty in the amount of \$3,000, the maximum penalty allowed by law. Although a lesser amount would arguable comply with Financial Code section 22715, subdivision (b)(3), courts follow an agency's interpretation of a statute unless it is clearly erroneous. (*Arnaudo Brothers, L.P. v. Agricultural Labor Relations Board* (2018) 22 Cal.App.5th 1213, 1226.)

6. Respondent has failed to present facts sufficient to establish that the amount was unduly punitive or to show good cause for the delay. Respondent argued that it was not given notice that the Department would enforce the late filing penalty and that no penalty was imposed in relation to the late filing of the 2016 Annual Report, essentially asserting the doctrine of equitable estoppel as an affirmative defense. However, courts have never accepted such reasoning. (*Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1369.) The mere failure to enforce a law, without more, will not estop the government from subsequently enforcing it. (*Fontana v. Atkinson* (1963) 212 Cal.App.2d 499, 509; *Western Surgical Supply Co. v. Affleck* (1952) 110 Cal.App.2d 388, 392–393; *Caminetti v. State Mut. Life Ins. Co.* (1942) 52 Cal.App.2d 321, 326.) Moreover, in this case, Financial Code section 22715 had not yet been enacted as enforceable law at the time of the late filing of the 2016 Annual Report.

ORDER

The Order Imposing Penalty Pursuant to Financial Code Section 22715 issued to respondent Credeo Finance, Inc. is affirmed. Respondent shall pay a penalty in the amount of \$3,000 within 30 days of the effective date of this decision.

DATE: September 20, 2019

DocuSigned by:


MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings

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ERRATA SHEET

(Changes to Proposed Decision – In the Matter of the Order Imposing Penalty against: Credeo Finance, Inc., Respondent OAH No. 2019080417)

- 1) On page 4 of the Proposed Decision, Paragraph Number 8 of Factual Findings, line 1, after “February” delete “4” and insert instead “1”.
- 2) On page 4 of the Proposed Decision, Paragraph Number 11, line 9, after “section” add “22715”.