

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF BUSINESS
OVERSIGHT,

Complainant,

v.

ADK BANCORP INC.,

Respondent.

OAH No. 2019080376

ORDER OF DECISION

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.

This Decision shall become effective on March 8, 2020.

IT IS SO ORDERED this 7th day of February, 2020.



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.

ADK BANCORP INC., Respondent

CFL License No. 60DBO-32977

OAH No. 2019080376

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 16, 2019, in Los Angeles.

Vanessa T. Lu, Counsel, represented the Commissioner of Business Oversight (the Commissioner).

No appearance was made by or on behalf of ADK Bancorp Inc. (respondent), despite its receipt of timely and appropriate notice of the hearing.

The hearing proceeded as a default prove-up. The record was closed and the matter submitted for decision at the conclusion of the hearing on October 16, 2019.

SUMMARY

Respondent appealed the Commissioner's summary revocation of its finance lender and broker license. The Commissioner may, pursuant to Financial Code section 22715, summarily revoke such a license if the licensee fails to file an annual report within 10 days after notice by the Commissioner that such report is due and has not been filed. In this case, it was established by a preponderance of the evidence that, because respondent failed to file its 2018 annual report within 10 days of such notice, the Commissioner had good cause to summarily revoke respondent's license. Respondent failed to appear at the hearing to justify its failure to timely file its 2018 annual report. The Commissioner's summary revocation of respondent's license is therefore affirmed.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of finance lending and/or brokering under the California Financing Law (CFL). (Fin. Code, § 22000 et seq.)
2. Respondent is a corporation, with its principal place of business in Westminster, and is licensed as a finance lender and broker under the CFL, main license number 60DBO-32977 (license).
3. On April 3, 2019, the Commissioner issued the Order Summarily Revoking Finance Lender and/or Broker License(s) Pursuant to Financial Code Section 22715 (Revocation Order) against respondent for failing to file its 2018 annual report

within 10 days after notice by the Commissioner that such report was due and had not been filed. (Ex. 1.)

4. Respondent timely submitted a written request for a hearing to challenge the Revocation Order. Respondent subsequently waived its right to an expedited hearing date provided by Financial Code section 22715. (Ex. 2.)

Warnings About the 2018 Annual Report

5. On October 6, 2014, when the Commissioner first issued to respondent its license, respondent was reminded of its obligation to file an annual report by March 15th of each year, even if no business has been conducted with the license. (Ex. 4.)

6. On January 2, 2019, February 1, 2019, and March 5, 2019, the Commissioner notified respondent of the March 15, 2019 deadline to file its 2018 annual report, by sending notices to the email address respondent established pursuant to the Commissioner's Order on Electronic Communications, dated November 22, 2013. The notifications reminded respondent that the Commissioner could summarily revoke respondent's license if it failed to file the 2018 annual report within 10 days after notice by the Commissioner that the report was due and had not been filed. (Ex. 5, pp. 7-12.)

7. As of March 15, 2019, respondent had not filed its 2018 annual report with the Commissioner. As a result, the Commissioner issued a notice to respondent on March 18, 2019, advising that respondent should file its 2018 annual report by or before March 29, 2019, or else its license would be summarily revoked pursuant to Financial Code section 22715. (Ex. 5, pp. 13-15.)

8. By March 29, 2019, respondent still had not filed its 2018 annual report with the Commissioner. (Ex. 6.)

9. As a result, on April 3, 2019, the Commissioner issued the Revocation Order.

10. On June 12, 2019, respondent submitted its 2018 annual report - 62 business days late.

LEGAL CONCLUSIONS

1. The burden of proof in a licensing disciplinary matter such as this is on the party filing the charges, here the Commissioner. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

2. Evidence Code section 115 provides that "[e]xcept as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." The CFL is silent as to which standard of proof to apply in this matter, and no evidence was offered indicating respondent's license is a professional one, so it is presumed that respondent's is an occupational license requiring the preponderance of the evidence standard. (See *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 318-319.) That standard requires evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. Financial Code section 22159, subdivision (a), requires each finance lender, broker, and program administrator licensee to file an annual report with the Commissioner, on or before March 15th of each year.

4. Financial Code section 22715, subdivision (a), allows the Commissioner to issue an order summarily suspending or revoking the license of any CFL licensee if that person fails to file an annual report within 10 days after notice by the Commissioner that the report is due and has not been filed.

5. In this case, the Commissioner established by a preponderance of the evidence that respondent was reminded several times of the need to file its 2018 annual report by March 15, 2019. Respondent thereafter failed to file its annual report by that deadline. The Commissioner gave respondent the final notice required by Financial Code section 22715, subdivision (a), but respondent failed to file its 2018 annual report within 10 days of that notice. In fact, respondent did not file its annual report until 62 business days after the deadline, and well after the Revocation Order was issued. The Commissioner therefore had good cause to summarily revoke respondent's license. Respondent failed to appear at the hearing to justify its failure to timely file its 2018 annual report. (Factual Findings 1-10.)

ORDER

Respondent ADK Bancorp Inc.'s appeal is denied. The Commissioner of Business Oversight's summary revocation of respondent's finance lender and broker license is affirmed.

DATE: October 31, 2019

DocuSigned by:

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings