

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 UCHE L. ENENWALI (State Bar No. 235832)
Senior Counsel
4 Department of Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 503-4203
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF DEPARTMENT OF FINANCIAL PROTECTION AND
9 INNOVATION
10 OF THE STATE OF CALIFORNIA

12 In the Matter of:) NMLS ID: 1727869
)
13 THE COMMISSIONER OF FINANCIAL) CONSENT ORDER
14 PROTECTION AND INNOVATION,)
)
15 Complainant,)
)
16 v.)
)
17)
18 DAVID M. GIUNTA,)
)
19 Respondent.)
20)
21)

22 The Commissioner of Financial Protection and Innovation (Commissioner) and Respondent
23 David M. Giunta (Giunta), enter into this Consent Order with respect to the following facts:

24 **I.**
25 **Recitals**

26 A. The Commissioner licenses and regulates mortgage loan originators, finance lenders,
27 and brokers under the California Financing Law (Fin. Code, § 22000 et seq.) (CFL).¹

28 ¹ All further references are to the CFL unless otherwise indicated.

1 B. Giunta is an individual currently employed and sponsored by Broker Solutions, Inc.
2 Broker Solutions, Inc. holds a CFL licensee, with the license number 603A957, and a California
3 Residential Mortgage License no. 4131117 issued by the Commissioner.

4 C. Giunta has a real estate broker license no. 01920479, issued by the Department of
5 Real Estate. Giunta’s real estate broker license does not reflect any disciplinary actions against him
6 as of the date of this Consent Order.

7 D. On or around December 31, 2020, Giunta filed an application for a mortgage loan
8 originator (MLO) license with the Commissioner by submitting a Form MU4 (Application) through
9 the Nationwide Mortgage Licensing System (NMLS) under Financial Code section 50140.

10 E. Giunta answered “Yes” to Financial Disclosure Questions (A) (3) and D which ask in
11 pertinent part:

12 (A)(3) Have you been the subject of a foreclosure action within
13 the past 10 years?

14 (D) Do you have any unsatisfied judgments or liens against
15 you?

16 F. In explaining his response to Financial Disclosure Questions (A) (3) and D referenced
17 in paragraph E above, Giunta stated that the events surrounding the judgments or liens against him
18 evolved from a civil complaint for breach of contract that was filed against Giunta and his related
19 entities, “RedRock Land Fund and Newport Private Capital, LLC,” in *Musa Bahia et al vs. RedRock*
20 *Land Fund, LLC et al*, Case No. 30-2017- 00923198, filed in the Superior Court of California,
21 County of Orange, in May 2017. The civil complaint alleged breach of fiduciary duty and fraud and
22 according to Giunta, “... none of the allegations were ever proven to be true and the parties resolved
23 the matter via settlement in December 2017.... The case was dismissed in January 2018.”

24 G. Since submitting his MLO application, Giunta has produced documentation
25 satisfactory to the Department demonstrating he has repaid the judgment liens and debts described in
26 Giunta’s response to Financial Disclosure Questions (A) (3) and D.

27 H. Giunta responded yes to Regulatory Action Disclosures K (6) and Customer
28 Arbitration/Civil Litigation Disclosure (P) (3) which ask in pertinent part:

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(K) Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever:

(6) denied or suspended your registration or license or application for licensure, disciplined you, or otherwise by order, prevented you from associating with a financial services-related business or restricted your activities?

(P) Have you ever been named as a respondent/defendant in a financial services related consumer-initiated arbitration or civil litigation which ... was settled for any amount?

I. In explaining his response to the Regulatory Action Disclosures K (6) and Customer Arbitration/Civil Litigation Disclosure (P) (3), Giunta stated:

No such findings! Applicant only failed to uphold high standards of commercial honor and just and equitable principles of trade, in violation of NFA Compliance Rule 2-4, by failing to discharge his personal guarantee (Applicant was NOT found to be unethical, unfair or dishonest)....

J. The Department investigates each mortgage loan originator license application it receives. The Department’s investigation disclosed that on or about September 4, 2013, the National Futures Association (NFA) initiated action against Giunta for “failing to discharge his personal guarantee to repay the principal and interest on a \$4m delinquent loan from a commodity pool operated by his firm to an entity operated and indirectly owned by Giunta and another individual, who was also a former principal and an associated person to his firm....”

K. The NFA ordered Giunta to repay the loan as the named guarantor and to withdraw from the NFA and not reapply for NFA associate membership or act as principal of an NFA member at any time in the future. The NFA noted that its action against Giunta did not constitute “fraudulent, manipulative or deceptive conduct,” or result in a finding of willful violation or failure to supervise.

L. California Financial Code Sections 22109.1 and 50141(a)(3) state that the Commissioner shall deny an MLO application unless the Commissioner finds 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 mortgage loan originator will operate

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honestly, fairly, and efficiently within the purposes of this division.

M. The Commissioner finds that entering into this Consent Order is in the public interest and consistent with the purposes fairly intended by the policy and provisions of the CFL and CRMLA.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth herein, the parties agree as follows:

II.

Terms and Conditions

1. Purpose. This Consent Order resolves the issues before the Commissioner in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumer, is in the public interest, and in consistent with the purposes and provisions of the CFL and CRMLA.

2. Administrative Penalty. Giunta shall pay an administrative penalty to the Commissioner in the amount of \$5,000.00, which shall be due and payable on the effective date of this Consent Order, as such date is defined in Paragraph 24. The administrative penalty must be made payable in the form of a cashier’s check or Automated Clearing House deposit to the Department of Department of Financial Protection and Innovation and transmitted to the attention of Accounting – Litigation, at the Department of Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2306. Notice of the payment must be concurrently sent to Uche Enenwali, Senior Counsel, Department of Department of Financial Protection and Innovation, 320 W. Fourth Street, Suite 750, Los Angeles, California 90013.

3. Revocation of License. Giunta agrees that for the 36-month period from the effective date of this Consent Order, should the Commissioner make a finding that Giunta has violated or is violating any provision of the CFL, the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.), or any rule, regulation, or law under the jurisdiction of the Commissioner, the state of California, the United States of America, and every state and foreign government (and political subdivision thereof), the Commissioner may, in his discretion,

1 automatically revoke any license held by or deny any pending application(s) of Giunta. Giunta
2 hereby waives any notice and hearing rights to contest such revocation or denial(s) which may have
3 been afforded him under the CFL, CRMLA, APA, CCP, or any other provision of law in connection
4 with this matter. Giunta further expressly waives any requirement for the filing of an accusation
5 under Government Code section 11415.60, subdivision (b), in connection with the Commissioner’s
6 revocation of his license under this paragraph.

7 4. Reporting Requirement. During the 36-month period from the effective date of the
8 Order, Giunta shall report to the Commissioner within 30 days any disciplinary investigations or
9 actions against him by any licensing agencies, any criminal investigations, prosecutions, or
10 convictions against Giunta, or any civil judgments against Giunta. Traffic citations are excluded.

11 5. Continuing Education. Giunta agrees to annually take at least 16 hours of continuing
12 education offered by a NMLS approved vendor for the next 36 months and agrees to submit proof of
13 compliance to Uche Enenwali, Senior Counsel, Enforcement Division. The first report is due on July
14 31, 2022. The second report is due on July 31, 2023. The third report is due on July 31, 2024. Should
15 the reporting deadline fall on a Saturday, Sunday, or state holiday, the report must be received by the
16 Commissioner’s agent by the following business day.

17 6. Waiver of Hearing Rights. Giunta acknowledges that the Commissioner is ready,
18 willing and able to proceed with the administrative enforcement action described above in
19 Paragraphs A-L, and Giunta hereby waives the right to a hearing, and to any reconsideration, appeal,
20 or other right to review which may be afforded pursuant to the CFL; the California Administrative
21 Procedure Act, the California Code of Civil Procedure, or any other provision of law; and by
22 waiving such rights, Giunta effectively consents to this Agreement becoming final.

23 7. Failure to Comply with Order. Giunta acknowledges and agrees that if he fails to
24 comply with the terms of this Order, the Commissioner may, in addition to all other available
25 remedies he may invoke under the CRMLA and CFL, summarily suspend/revoke the MLO
26 licenses of Giunta until Giunta is in compliance. Giunta waives any notice and hearing rights to
27 contest such summary suspensions which may be afforded under the CFL, the California
28 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law

1 in connection therewith.

2 8. Approval of MLO Application. The Commissioner hereby acknowledges that
3 Giunta’s MLO application is ready to be approved, and the Commissioner hereby agrees to approve
4 it concurrently with the execution of the Consent Order.

5 9. Information Willfully Withheld or Misrepresented. The Consent Order may be
6 revoked, and the Commissioner may pursue any and all remedies under the CFL against Giunta if
7 the Commissioner discovers that Giunta knowingly or willfully withheld information use for and
8 relied upon in the Consent Order.

9 10. Future Actions by Commissioner. If Giunta fails to comply with any terms of the
10 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
11 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
12 against Giunta, or any of his partners, owners, officers, shareholders, directors, employees, or
13 successors for any and all unknown violations of the CFL.

14 11. Assisting Other Agencies. The parties further acknowledge and agree that nothing in
15 the Consent Order shall limit the Commissioner’s ability to assist any other agency (city, county,
16 state, or federal) with any prosecution, administrative, civil, or criminal, brought by any such agency
17 against Giunta or any other person based upon any of the activities alleged in this matter or
18 otherwise.

19 12. Headings. The headings to the paragraphs of this Consent Order are inserted for
20 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
21 the provisions hereof.

22 13. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
23 interest.

24 14. Reliance: Each of the parties represents, warrants, and agrees that in executing this
25 Agreement s/he has relied solely on the statements set forth herein and the advice of his or her own
26 counsel. Each of the parties further represents, warrants, and agrees that in executing this Consent
27 Order s/he has placed no reliance on any statement, representation, or promise of any other party, or
28 any other person or entity not expressly set forth herein, or upon the failure of any party or any other

1 person or entity to make any statement, representation, or disclosure of anything whatsoever. The
2 parties have included this clause: (1) to preclude any claim that any party was in any way
3 fraudulently induced to execute this Agreement; and (2) to preclude the introduction of parol
4 evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

5 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
6 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
7 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
8 provision. No waiver by either party of any breach of, or of compliance with, any condition or
9 provision of this Agreement by the other party will be considered a waiver of any other condition or
10 provision or of the same condition or provision at another time.

11 16. Full Integration. This Consent Order is the final written expression and the complete
12 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
13 between the parties with respect to the subject matter hereof, and supersedes all prior or
14 contemporaneous agreements, negotiations, representations, understandings, and discussions
15 between and among the parties, their respective representatives, and any other person or entity, with
16 respect to the subject matter covered hereby.

17 17. Governing Law. This Consent Order will be governed by and construed in
18 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court,
19 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
20 forum to the maintenance of such action or proceeding in such court.

21 18. Counterparts. This Consent Order may be executed in one or more separate
22 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
23 together constitute a single document.

24 19. Effect Upon Future Proceedings. If Respondent applies for any license, permit or
25 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future
26 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
27 admitted for the purpose of such application(s) or enforcement proceedings(s).

28 20. Voluntary Agreement. Giunta enters into this Consent Order voluntarily and without

1 coercion and acknowledges that no promises, threats, or assurances have been made by the
2 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
3 and acknowledge that he, she, or it is executing this Agreement completely voluntarily and without
4 any duress or undue influence of any kind from any source.

5 21. Notice. Any notices required under the Consent Order shall be provided to each party
6 at the following addresses:

7 If to Respondent: David Michael Giunta
8 2514 Bayside Drive
9 Corona Del Mar, California 92625

10 If to the Commissioner: Uche Enenwali, Senior Counsel
11 Department of Department of Financial
12 Protection and Innovation
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344

13 22. Signatures. A fax or electronic mail signature shall be deemed the same as an original
14 signature.

15 23. Public Record. Giunta hereby acknowledges that this Consent Order is and will be a
16 matter of public record.

17 24. Effective Date. This Consent Order shall become final and effective when signed by
18 all parties and delivered by the Commissioner's agent via e-mail to David M. Giunta, at
19 davidgiunta@me.com.

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25. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

IN WITNESS WHEREOF, the parties hereto have approved and executed the Consent Order on the dates set forth opposite their respective signatures.

Dated: July 22, 2021

CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection and
Innovation

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: July 21, 2021

By _____
DAVID M. GIUNTA, an Individual
Respondent

