

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF BUSINESS
OVERSIGHT,

Complainant,

v.

PACIFIC EQUITY BUSINESS CORPORATION,

Respondent.

OAH No. 2019060681

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 May 7, 2020. IT IS SO

ORDERED this 7th day of April, 2020



[Redacted Signature]

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

VS.

PACIFIC EQUITY BUSINESS CORPORATION, Respondent

Agency No. CFL No: 603-L032

OAH No. 2019060681

PROPOSED DECISION

Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on December 10, 2019, in Los Angeles, California.

Joanne Ross, Senior Counsel, and Noah M. Bean, Counsel, Department of Business Oversight (Department) represented complainant Manuel P. Alvarez, the Commissioner of Business Oversight (Commissioner).

No appearance was made by or on behalf of respondent Pacific Equity Business Corporation (Pacific Equity).

The complainant filed this Accusation to revoke the finance lending license of Pacific Equity, acting through its principal Jonathan Bennett (Bennett), for failure to disclose a previous disciplinary action taken by the Department of Real Estate (DRE)¹ on its amendment application to the Department. The DRE's disciplinary action was based on allegations of Pacific Equity's dishonest dealing and willful disregard of the Real Estate law by its failure to maintain client trust accounts and using those trust accounts for private purposes, actions substantially related to the activity regulated by the Department. In aggravation, complainant has provided evidence of other civil judgments against Pacific Equity which are substantially related to the activity regulated by Department and which he failed to disclose. Complainant met his burden of proof with undisputed documentary evidence in support of his allegation and his request for the revocation of respondent Pacific Equity's finance lending license is granted.

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

¹ The DRE was formerly known as the Bureau of Real Estate (BRE). All references to this agency shall be to the DRE.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Pursuant to the California Financing Law (CFL), Financial Code section 22000 et seq., the Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of finance lending or brokering.
2. Respondent Pacific Equity is a finance lender licensed by the Commissioner, CFL License No. 603-L032, pursuant to the CFL.
3. On May 24, 2019, the Commissioner filed and served, by certified mail, Pacific Equity through its President and sole owner, Bennett, President, the following documents: Notice of Intention to Issue Order Revoking Finance Lending License pursuant to Financial Code Section 22714; Accusation to Revoke Finance Lending License pursuant to Financial Code section 22714; Statement to Respondent; Notice of Defense; Government Code sections 11507.5, 11057.6 and 11507.7; Cover letter; and proof of service. (Ex. 1.)
4. On June 10, 2019, Bennett, on behalf of Pacific Equity, timely filed a Notice of Defense, requesting a hearing. In the Notice of Defense, Bennett reported Pacific Equity's address as the same address used by the Commissioner in his service of the documents listed in factual finding 3. (Exs. 2-5.)
5. After receipt of Pacific Equity's Notice of Defense, it was properly served with the following documents at Pacific Equity's address: Request to Set Administrative Hearing (dated June 17, 2019); Notice of Assigned Hearing Dates (dated June 18, 2019); and Notice of Administrative Hearing (dated June 18, 2019).

6. The hearing proceeded as a default pursuant to Government Code section 11520, based on respondent's failure to appear. At the hearing, complainant's counsel informed the ALJ that they had spoken to Bennett prior to service of the Accusation, but not since that time. OAH did not receive any request to continue the December 10, 2019 from respondent Pacific Equity or Bennett, or anyone acting on their behalf. However, no appearance was made by or on behalf of Pacific Equity.

Cause for Discipline

7. Complainant's Accusation is based upon Pacific Equity's failure to disclose DRE's ongoing action against it in its original filing, and in subsequent filings its discipline by the DRE, because the conduct which formed the basis of that discipline is substantially related to the activity regulated by the Department pursuant to the CFL.

8. Much of the supporting evidence for the DRE's action is based upon documentation admitted pursuant to complainant's request for official notice, Government Code section 11515. On November 27, 2019, complainant served Pacific Equity with a Request for Judicial Notice. (Ex. 6.) Pacific Equity did not serve any objections to that notice. (Exs. 7, and 17-20.)²

² Exhibit 7 includes certified copies of the DRE Accusation against Pacific Equity of May 12, 2015, the Proposed Decision dated September 4, 2015 and the Decision dated September 25, 2015. While the truth of the findings is not subject to official notice, the actions of the DRE, which are inclusive of its issuance of the Accusation and charges contained therein, the issuance and dates of issuance of DRE's proposed and final decision and DRE's decision to impose discipline, as well as the discipline

9. Complainant's Accusation is supported by extensive documentation, Exhibits 7-21. All official records of the Department, the Secretary of State, the DRE and court records were certified. The foundation for documents obtained during the investigation was established by either the Department's Senior Examiner, Subhendra Singh, or its Legal Analyst, Monica Ahrens, both of whom were involved in the investigation.

10. (A) Ms. Singh, the Department's Senior Examiner Specialist, provided knowledgeable and thoughtful testimony. Ms. Singh has been employed by the financial services division of the Department for 15 years. During the past five years, she has primarily examined applicants under the CFL to assess whether trust funds have been properly reconciled, or if there have been shortages or misuses of funds.

(B) Pacific Equity's license authorizes it to cater to the subprime residential borrower, meaning, individuals with less than perfect credit who do not qualify for mainstream mortgages. The Department reviews its financial loan licensees carefully in order to protect a more vulnerable consumer. It must ensure the company, as well as the principals of the company, officers, directors, with ten percent or more ownership, and owners, if also actively involved as principals, have not been involved in criminal activity.

(C) Adverse actions against licensees have to be reported. Any misconduct which is related to provisions of the CFL is relevant to a determination of a principal's "moral capability" according to Ms. Singh. Denial of an application is not

imposed, are subject to official notice. Pursuant to Financial Code section 22705.1 a certified copy of the record is conclusive evidence of the events related therein.

always required if the Department can successfully work with the applicant to remove a principal who is not qualified.

(D) Full disclosure of any adverse action related to the CFL has to be reported to the Department, generally as an amended Statement of Identity of Bennett. Court documents should also be attached. Bennett did not disclose the action against Pacific Equity by DRE as required by the CFL. Although he was not personally named he had a duty to make the disclosure on behalf of Pacific Equity.

(E) Disclosures by applicants or licensees also must notify the Department of any material fact that is finance-related; e.g., money laundering, trust fund violations, tax evasion.

(F) Applicants or licensees are expected to update their disclosures to the Department. Ms. Singh discovered Pacific Equity's omission through her investigation of his other DRE licenses.

(G) When applicants or licensees make submissions to the Department they attest to the accuracy of their statements and agree to abide by the CFL laws.

(H) As of the date of the hearing, Pacific Equity has not updated its disclosures.

11. On all filings by Pacific Equity with the Department, Bennett has been listed as the sole owner, officer and director. (Exs. 8-15.) Bennett admits to being the sole 100% shareholder, president and director of Pacific Equity. (Ex. 15.)

12. The Department first received Pacific Equity's application for a finance lending license on October 31, 2013, and his application was first amended on

February 4, 2014. (Exs. 8-9.) Bennett was obligated to provide all the disclosures in the "MU" forms which are standardized forms used to provide the Department with necessary background information on its licensees and to determine whether to approve or deny an application or application renewal. Bennett filed MU1 and MU2 forms on behalf of Pacific Equity, and attested to their accuracy, on February January 22, 2018. (Exs. 10 and 11.) Bennett also filed the required forms entitled Statement of Identity and Questionnaire in February 2014, (Ex. 12), May 8, 2014, (Ex. 13), and June 26, 2017, (Ex. 14).

13. Bennett did not reference any previous actions against Pacific Equity by the DRE in his MU forms or Statements of Identity (*See* MU2 filings, Ex. 11 (January 22, 2018).)

14. Bennett never disclosed that an Accusation was filed by the DRE on May 14, 2015, against Pacific Equity and Sam Myers, alleging violation of the real estate law based on its failure to maintain a trust account and failure to return an "earnest money" deposit it solicited in 2013 in the amount of \$10,000. The transaction was also the subject of a civil suit against them as set forth in factual finding 16 below.

15. Bennett never disclosed the DRE adoption of the proposed decision revoking the licenses of Pacific Equity and Sam Myers, effective November 3, 2015. (Ex. 7; CalBRE number H-39834; OAH case number 2015060342.)

16. In aggravation, Bennett also did not disclose other civil actions: He did not disclose a complaint filed on October 9, 2013, and a default judgment entered April 30, 2014, in the amount of \$10,000 plus interest and costs, in an action for conversion against Pacific Equity and Sam Myers, Superior Court of California, County of Los Angeles, Case No. 13K13798. (Ex. 19.). He did not disclose a default judgment

against him entered on April 2, 2012 in a civil action filed in Superior Court of California, County of Los Angeles, case no. BC466267, and a Judgment thereon entered June 20, 2012 in the amount of \$451,920 in his Statement of Identity and Questionnaire. In that action he was alleged, along with Sam Myers, named individually in the DRE action, to have engaged in a scheme to procure an investor for an electric car company by falsely promising to transfer stock ownership and a controlling management of the company to the investor. Multiple allegations included conversion, breach of fiduciary duty and unfair competition. (Ex. 18.).

LEGAL CONCLUSIONS

1. Financial Code section 22705.1 provides that the commissioner may take disciplinary action against any licensee disciplined by another state agency where the action is substantially related to the activity regulated under the CFL. A certified copy of the record of the disciplinary action taken against the licensee by the State of California shall be conclusive evidence of the events related therein.

2. Financial Code section 22714 provides that the commissioner "shall suspend or revoke any license, upon notice and a reasonable opportunity to be heard" if the commissioner finds, among other things, the licensee failed to comply with any requirement of the commissioner or if a "fact or condition exists that, if it had existed at the time of the original application for the licensee, reasonably would have warranted the commissioner in refusing to issue the license originally."

3. By reason of the Legal Conclusions and the Factual Findings, good cause has been established for revocation of Pacific Equity's license. Pacific Equity, by and through its sole owner, officer and director, Bennett, is subject to discipline for failing

to disclose the DRE action, which is based upon conduct substantially related to the activities regulated under the CFL. Revocation is warranted on the ground that if the DRE action was known at the time of the original application, it reasonably would have warranted the commissioner to refuse the original license.

ORDER

CFL License Number 603-L032 issued to respondent Pacific Equity Business Corporation is revoked.

DATE: January 9, 2020

DocuSigned by:

EILEEN COHN

Administrative Law Judge
Office of Administrative Hearings