

BEFORE THE
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
STATE OF CALIFORNIA

In the Matter of:

COMMISSIONER OF FINANCIAL PROTECTION
AND INNOVATION,

Complainant,

v.

JERRY GANG CHEN,

Respondent.

Agency No. 1195768

OAH No. 2020020639


DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Financial Protection and Innovation (formerly the Department of Business Oversight) as its Decision in the above-entitled matter.

This Decision shall become effective on November 21, 2020.

IT IS SO ORDERED THIS 22nd day of October, 2020.




MANUEL P. ALVAREZ

Commissioner of Financial Protection and Innovation

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STATE OF CALIFORNIA**

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v.

JERRY GANG CHEN,

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Agency Case No. 1195768

OAH No. 2020020639

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 11, 2020, in Los Angeles, California.

Vanessa T. Lu, Counsel, Department of Business Oversight (Department), represented complainant Manuel P. Alvarez, the Commissioner of Business Oversight (Commissioner).

Jerry Gang Chen (respondent) represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 11, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 10, 2020, the Commissioner served respondent with a Notice of Intention to Deny Application for Mortgage Loan Originator License (Notice), a Statement of Issues, and other related documents. Pursuant to the Notice, the Commissioner notified respondent of his intention to enter an order denying his application for a mortgage loan originator license (MLO license) for the reasons stated in the Statement of Issues. The Notice also advised respondent of his appeal rights.

2. On January 28, 2020, respondent submitted a Notice of Defense which contained his request for a hearing, and an Answer to Commissioner's Intention to Deny My Application for a Mortgage Loan Originator License. (Exh. 2.) This hearing ensued.

Respondent's Application

3. On August 20, 2019, respondent filed an application for an MLO license with the Commissioner by submitting a Form MU4 through the Nationwide Mortgage Licensing System (NMLS) (August 20 application). (Exh. 23.)

4. By filing the August 20 application, respondent affirmed and attested that he executed the application on his own behalf, and he agreed to and represented

that "the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true, accurate and complete and are made under the penalty of perjury[.]" (Exh. 23, p. DBO-538.) Respondent further attested and agreed to the following: "If the Applicant has knowingly made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied." (*Id.*, at p. DBO-539.)

5. The Form MU4 application form has a section entitled "Disclosure Questions," which contains a series of questions to be answered by the applicant, and another section entitled "Disclosure Explanations," which provides space for the applicant to upload documents and provide explanations for the answers given in the Disclosure Questions section. (Exh. 23, pp. DBO-533 to 538.)

Review of Respondent's Application

6. Glenn Zardes is currently employed by the Department as a Corporations Examiner in the Mortgage Loan Originator License Unit. Zardes has been employed by the Department for 12 years. He has been a Corporations Examiner for 10 years. As a Corporations Examiner, Zardes' duties include reviewing and approving MLO license applications submitted through the NMLS.

7. Zardes conducted the Commissioner's review of respondent's August 20 application and two subsequent amended applications. (See Exh. 22.) Zardes reviewed the information in respondent's applications, including documents respondent uploaded through the NMLS, as well as documents and records the Department obtained from courts and other government agencies. Zardes testified at the hearing regarding the findings of his review of respondent's August 20 application and the two

amended applications. Based on his review of respondent's applications, Zardes concluded that respondent failed to meet the minimum requirements for issuance of an MLO license.

BANKRUPTCY FILINGS

8. The Disclosure Questions section of the August 20 application contains Questions (A)(1) and (A)(2), which read as follows:

(A)(1) Have you filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past 10 years?

(A)(2) Based upon events that occurred while you exercised control over an organization, has any organization filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past 10 years?

9. Respondent answered "Yes" to Question (A)(1). In the Disclosure Explanations section, respondent provided an explanation and uploaded records for his Chapter 7 bankruptcy petition filed on January 30, 2009, in U.S. Bankruptcy Court case number ending in 12037-BR. (Exhs. 4, 5; Exh. 23, p. DBO-536.)

10. Respondent answered "Yes" to Question (A)(2). In the Disclosure Explanations section, respondent provided an explanation and uploaded records for the Chapter 7 bankruptcy petition filed by his company, Presidential Capital Investment, on January 30, 2009, in U.S. Bankruptcy Court case number ending in 12051-SB. (Exhs. 6, 7; Exh. 23, p. DBO-535.)

11. The Commissioner's review of the August 20 application revealed that, in response to Question (A)(1), respondent failed to disclose he had two additional personal bankruptcy filings in 2013 and 2017. Respondent filed for Chapter 13 bankruptcy on March 25, 2013, in U.S. Bankruptcy Court case number ending in 17653-SK. (Exhs. 8, 9.) Four years later, respondent filed for Chapter 7 bankruptcy on July 14, 2017, in U.S. Bankruptcy Court case number ending in 18547-BR. (Exhs. 10, 11.)

12. By failing to disclose his 2013 and 2017 bankruptcy petitions as required by Question (A)(1), respondent withheld information and made a material misstatement in the August 20 application.

UNSATISFIED JUDGMENTS OR LIENS

13. The Disclosure Questions section of the August 20 application contains Question (D), which asks: "Do you have any unsatisfied judgments or liens against you?" Respondent answered "No." However, in the Disclosure Explanations section, respondent provided the following explanation that he did have a pending state tax lien and unsatisfied monetary judgments:

I still have a state tax lien against me. California FTB¹ has accepted my amended tax filing and is currently under review. Once they complete the review, the tax liability should be eliminated. Worse case, I will settle with California FTB. I also have some unsatisfied money judgments with some individuals. I am currently working with them for possible settlements.

¹ FTB stands for Franchise Tax Board.

(Exh. 23, p. DBO-537.)

14. In the Disclosure Explanations section, respondent uploaded copies of his 2010 and 2011 Internal Revenue Service tax return transcripts. Zardes reviewed those transcripts and found they did not explain respondent's outstanding tax liability or indicate that his state tax lien was under review with the California Franchise Tax Board.

15. Zardes reviewed records from the California Franchise Tax Board, which showed respondent had outstanding tax liens of \$19,359.62 for the 2004 tax year and \$19,768 for the 2007 tax year. (Exhs. 12, 13.) Respondent failed to disclose these two outstanding tax liens in the August 20 application.

16. In the Disclosure Explanations section, Zardes noted that respondent failed to provide documentation or further details regarding his "unsatisfied money judgments with some individuals." (Exh. 23, p. DBO-537.) Zardes reviewed court records showing respondent had two outstanding judgments against him. An Abstract of Judgment was issued on December 21, 2009, in Los Angeles Superior Court case number 08C02970, showing a judgment of \$5,287.07 was entered on September 28, 1998, and renewed on September 15, 2008, in favor of the plaintiff, Leasecomm Corporation, against the defendant, "Jerry Chen dba Universal Telecommunication." (Exh. 14.) Another judgment in the amount of \$84,953.35 was entered by default against respondent and his company, Presidential Capital Investment, Inc., and one other individual, on November 6, 2013, in Los Angeles Superior Court case number GC050029. (Exhs. 16, 17, 18.)

17. By answering "No" to Question (D), and providing contradictory and incomplete explanations, respondent withheld information and made material misstatements in the August 20 application.

REGULATORY ACTION

18. The Disclosure Questions section of the August 20 application contains Question (K)(5), which asks: "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever . . . revoked your registration or license?" (Exh. 23, p. DBO-534.) Respondent answered "Yes." He provided an explanation and uploaded records in the Disclosure Explanations section.

19. Respondent explained that his answer to Question (K)(5) was based on "Revocation of Broker License." (Exh. 23, p. DBO-535.) Respondent disclosed that he received a real estate broker license in 2003 and started his own company, Presidential Capital Investment Inc. He disclosed that the California Department of Real Estate (DRE) conducted an audit of his files in 2009. Respondent explained that because he "was not able to provide full records for them to review," the DRE "decided to down grade my broker license to [a] restricted agent license for two years." (*Id.*, at p. DBO-536.) Respondent disclosed that he "never applied [for] the removal of the revocation or activated my agent license." (*Ibid.*)

20. Respondent uploaded a Stipulation and Agreement (Stipulation), and the underlying Accusation, filed in DRE case number H-36596 LA. (Exhs. 19, 20.) The Stipulation was a settlement of the causes for discipline contained in the Accusation. Respondent signed the Stipulation on October 25, 2010. Pursuant to the Stipulation, respondent's real estate broker license was revoked; however, a restricted real estate salesperson license would be issued to respondent if (1) he provided satisfactory

evidence that the deficit in his trust fund account was cured, and (2) he applied for a restricted license within 90 days of the effective date of the Stipulation. The Stipulation also revoked the corporate real estate license of respondent's company, Presidential Capital Investment Inc.

21. The Accusation in DRE case number H-36596 LA was filed on April 19, 2010. (Exh. 19.) By signing the Stipulation, respondent agreed that, among other things, his conduct and that of his company, Presidential Capital Investment Inc., violated Business and Professions Code sections 10145, 10146, and 10176, subdivisions (a), (e), and (g); and violated California Code of Regulations, title 10, sections 2831, 2831.1, 2832.1, 2832, subdivisions (d) and (e), 2840, 2848, 2950, subdivisions (d), (f), (g), and (i), and 2951. (Exh. 20, DBO-209.)

22. The Accusation alleged that respondent and his company, Presidential Capital Investment Inc., engaged in misconduct including: failing to maintain trust funds in a neutral escrow depository or bank; after collecting advance fees, failing to place client funds in trust accounts maintained by a bank; making substantial misrepresentations in advertising; commingling client funds or property with personal funds or property; taking a secret or undisclosed amount of compensation, commission or profit; and failure by respondent to supervise and control the activities of his company.

23. The Accusation also alleged that respondent and his company violated provisions of Title 10 of the California Code of Regulations by, among other things, using a fictitious business name without holding a license in that name; failing to maintain trust fund records; failing to properly handle trust funds; failing to use DRE-approved borrower disclosure statements; failing to adhere to advertising criteria; failing to maintain books and records according to accepted principles of accounting

and good business practices; failing to deposit escrow funds in a bank, trust account, or escrow account on or before the close of the next full working day after receipt thereof; withdrawing or disbursing money from a trust account without written instructions; upon the close of escrow, failed to provide each principal in the transaction a written statement of all receipts and disbursements; and failed to maintain record keeping and funds handling in compliance with the applicable regulations.

24. (A) In his Disclosure Explanation for Question (K)(5), respondent stated that he "never applied [for] the removal of the revocation or activated my agent license." (Exh. 23, p. DBO-536.) This statement was false, and known by respondent to be false. Records obtained from the DRE showed that on March 8, 2016, respondent filed a petition with the DRE seeking reinstatement of his real estate broker license. On August 13, 2016, the DRE issued an order denying respondent's petition for reinstatement. (Exh. 21.)

(B) In denying respondent's petition for reinstatement, the DRE found that respondent failed to meet his burden of proving sufficient rehabilitation to warrant the reinstatement of his broker license. Specifically, respondent offered no evidence of discharging his outstanding state tax lien and two pending civil judgments; he denied having any court judgments against him; he offered no evidence of curing the trust fund shortage in his escrow account; and he continued to deny responsibility for the actions that led to his license discipline. The DRE's order denying the petition became effective on September 5, 2016. (Exh. 21, pp. DBO-219-220.)

AMENDED APPLICATIONS

25. Respondent filed two additional amended applications through NMLS on September 13, 2019 (September 13 application) and on October 8, 2019 (October 8 application). (Exhs. 24, 25.)

26. Zardes reviewed the September 13 and October 8 applications. Respondent signed the September 13 and October 8 applications under penalty of perjury, and made the same attestations as in the August 20 application that the information provided was current, true, accurate and complete. In the October 8 application, respondent uploaded a Statement of Citizenship and his U.S. passport.

27. Zardes noted that, in the September 13 and October 8 applications, respondent answered "No" to Question (D), which asked if he had any unsatisfied judgments or liens against him. However, the September 13 and October 8 applications do not include respondent's explanation from the August 20 application that he had an outstanding state tax lien and unsatisfied money judgments. Respondent changed his Disclosure Explanation to Question (D) in the September 13 and October 8 applications without explaining the reason for the change. Zardes also noted that respondent deleted the 2010 and 2011 tax transcripts from the September 13 and October 8 applications, again without explaining the reason for the deletion.

Respondent's Contentions

28. Respondent has worked in the mortgage industry for over 20 years. Over the past five years, he has worked for banks and mortgage lenders as a non-producing manager and a loan officer. He is currently working for the Bank of England as a producing branch manager. Respondent feels he has conducted business and served the community with honesty, integrity, and enthusiasm.

29. Respondent contends he answered questions honestly and provided full explanations in his application for an MLO license. Respondent notes that bankruptcy records are all public records, so there is no reason for him to hide his bankruptcy filing history. He is willing and able to provide any detail about his bankruptcy cases. Respondent feels his bankruptcy cases should not be considered a failure or unethical or bad faith conduct on his part. Respondent worked as a real estate broker from 2000 to 2009, and he had no choice but to file his bankruptcy cases when his business failed because of the 2008 mortgage crisis.

30. Respondent explained that he filed his 2013 bankruptcy case to protect his home from foreclosure. He fell behind on his mortgage payments and could not afford to pay the big lump sum payment needed to avoid foreclosure. His Chapter 13 bankruptcy case allowed him to have a payment plan. Respondent dismissed his Chapter 13 bankruptcy case after his mortgage lender approved a loan modification for him.

31. According to respondent, when the 2008 mortgage crisis happened, he was financially, emotionally, and physically depressed. He was unable to deal with financial disagreements with individuals, businesses, and the government. From 2009 to 2014, he was unable to make enough money to support his family. Respondent's personal health improved in 2015. He began working again and his income improved. He filed for Chapter 7 bankruptcy in 2017 to "clean up the mess and get rid of debts [that] occurred after 2009." (Exh. 2.) Respondent claims that all of his debts were discharged in his 2017 bankruptcy case.

32. Respondent contends that at the time he submitted the August 20 application, he had either paid or settled all of his federal tax liens, and he was working with the Franchise Tax Board to settle the state tax liens. Respondent claims

the Franchise Tax Board has now accepted his tax returns and determined he no longer owes any state tax liens. He contends he is in good standing with the IRS and the Franchise Tax Board. He contends the 2004 and 2007 state tax liens of \$19,768 and \$19,359, respectively, have been settled or paid, and he owes nothing to the Franchise Tax Board. Respondent presented no documentary evidence to corroborate these contentions.

33. Respondent denied having **done** any business with Leasecomm Corporation and contends Leasecomm's judgment of \$5,287.07 is not against him but another person named "Jerry Chen." Respondent claimed he went to the Alhambra courthouse and pulled records showing that Leasecomm's judgment was against another "Jerry Chen" with a different address and social security number. No such records were presented at the hearing. Respondent claimed he included this judgment as a disputed debt in his 2017 bankruptcy petition, and the judgment was discharged in the bankruptcy case. However, a judgment for \$5,287.07 is not listed in the bankruptcy petition. (See Exh. 10.)

34. Respondent explained the circumstances of the \$84,953.35 default judgment entered against him in favor of the plaintiff, Siu Yong Ko. In 2009, respondent sold an investment property to Ko because he was unable to afford the mortgage payment. After escrow closed, there was a disagreement and Ko filed a lawsuit against respondent in 2009. Respondent claimed he had no money and could not afford to hire an attorney to defend him in the lawsuit. Respondent claimed that, because he was financially, emotionally, and physically depressed, he let the case go to a default judgment in favor of Ko. Respondent claimed the default judgment was discharged in his 2017 bankruptcy case. The Order of Discharge presented at the hearing does not specifically identify this default judgment as being discharged. The

Order of Discharge contains general information regarding bankruptcy discharge, and gives some examples of debts that are not discharged in bankruptcy. (Exh. 11, p. DBO-173.)

35. Regarding the DRE's disciplinary action against his real estate broker's license, respondent contends that when he signed the Stipulation with the DRE in 2010, he was still in financial, emotional, and physical stress. He signed the Stipulation "without looking at it." He just wanted to move on and put the DRE allegations to the past. Respondent now understands that signing the Stipulation without reading it more closely was a bad move and has hurt him in the long run. He now feels he should have defended himself when the DRE auditor accused him of wrongdoing.

36. Respondent would like one more opportunity to submit an application for an MLO license that contains all of the information required by the Commissioner.

LEGAL CONCLUSIONS

1. The California Financing Law is set forth at Financial Code section 22000 et seq. The California Residential Mortgage Lending Act is set forth at Financial Code section 50000 et seq. The applicable regulations are set forth in Title 10 of the California Code of Regulations.

2. Under Financial Code section 22109.1, the Commissioner shall deny an application for an MLO license unless the Commissioner makes, at a minimum, the findings specified in subdivisions (a)(1) through (a)(6). Subdivision (a)(3) requires a finding 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 honestly, fairly, and efficiently within the purposes of this division."

3. The Commissioner's findings required by Financial Code section 22109.1 "relates to any matter, personal or professional, that may impact upon an applicant's propensity to operate honestly, fairly, and efficiently when engaging in the role of a mortgage loan originator." (Cal. Code Regs., tit. 10, § 1422.6.2, subd. (a).)

4. An applicant for an MLO license may be precluded from obtaining a license where his personal history includes: "(1) Any liens or judgments for fraud, misrepresentation, dishonest dealing, and/or mishandling of trust funds, or [1] (2) Other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant." (Cal. Code Regs., tit. 10, § 1422.6.2, subd. (c)(1) and (2).)

5. Pursuant to Financial Code section 50513, subdivision (a)(2), the Commissioner may "deny . . . a mortgage loan originator license if an applicant . . . withholds information or makes a material misstatement in an application for a license or license renewal."

6. Financial Code section 22170, subdivision (b), provides: "It is unlawful for any person to knowingly make an untrue statement to the commissioner or the Nationwide Mortgage Licensing System and Registry during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division."

7. (A) Grounds exist to deny respondent's application for an MLO license, pursuant to Financial Code sections 50513, subdivision (a)(2), and 22170, subdivision (b), because respondent withheld information and made material misstatements in his

application, and knowingly made untrue statements to the Commissioner during the course of licensing, with the intent to impede, obstruct, or influence the administration or enforcement of the California Financing Law, based on Factual Findings 8-27.

(B) Here, respondent made false statements to the Commissioner and withheld information in his applications for an MLO license by failing to disclose his bankruptcy filings in 2013 and 2017 (Factual Finding 11); by failing to disclose his outstanding judgments and state tax liens (Factual Findings 15, 16); and by falsely stating that he never applied for the removal of the revocation of his real estate broker license when, in fact, he filed a petition for reinstatement of his broker license, which the DRE denied on August 13, 2016 (Factual Finding 24).

8. (A) Grounds exist to deny respondent's application for an MLO license, pursuant to Financial Code section 22109.1, subdivision (a)(3), and California Code of Regulations, title 10, section 1422.6.2, because respondent 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 within the purposes of the California Financing Law and the California Residential Mortgage Lending Act, based on Factual Findings 8-27.

(B) Here, respondent does not meet the requisite financial responsibility, character and general fitness for an MLO license. Respondent conducted business under his real estate broker license in violation of the real estate laws and regulations, resulting in the revocation of his individual broker license and the corporate real estate license of his company, Presidential Capital Investment Inc. (Factual Findings 21-23.) Respondent's petition for reinstatement of his real estate broker license was denied by the DRE because he failed to present sufficient evidence of rehabilitation to justify reinstatement of his broker license. (Factual Finding 24.) Respondent made


agreements and representations by signing the Stipulation for the revocation of his real estate broker license, which he now seeks to avoid by claiming he did not review the Stipulation before signing. Respondent failed to disclose his outstanding judgments and state tax liens in his applications for an MLO license. He has had multiple bankruptcies and failed to disclose his most recent bankruptcy filings, in 2013 and 2017, in his application.

9. Respondent's testimony and contentions were not supported or corroborated by the documentary evidence and, therefore, failed to establish mitigation or excuse for his failure to provide current, true, accurate and complete information in his application for an MLO license. Based on the circumstances presented, the denial of respondent's application for an MLO license is warranted.

ORDER

The application for a mortgage loan originator license filed by respondent Jerry Gang Chen is denied.

DATE: July 14, 2020

DocuSigned by:

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings