

BEFORE THE
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF FINANCIAL
PROTECTION AND INNOVATION,

Complainant.

v.

ROBERT GONZALEZ, JR., also known as
ROBERTO GONZALEZ VIRAMONTES,
ROBERT GONZALEZ VIRAMONTES, JR.,
ROBERTO GONZALEZ VIRAMONTES, JR.,
and ROBERT GONZALEZ-VIRAMONTES,

Respondent.

Agency No. 60DBO072891

OAH No. 2020010980

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated August 11, 2020, is hereby adopted by the Department of Financial Protection and Innovation as its Decision in the above-entitled matter.

This Decision shall become effective on December 21, 2020.

IT IS SO ORDERED this 19th day of November 2020.




MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

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

**In the Matter of the Accusation (Barring from any Position,
etc., under Financial Code section 22169), and**

**In the Matter of the Accusation (Revoking MLO License
under Financial Code section 22714), and**

**In the Matter of the Statement of Issues (Denying CFL
License Application) against:**

**ROBERT GONZALEZ, JR., aka ROBERTO GONZALEZ
VIRAMONTES, ROBERT GONZALEZ VIRAMONTES, JR.,
ROBERTO GONZALEZ VIARMONTES, JR., and ROBERT
GONZALEZ-VIRAMONTES, Respondent**

Agency Case No. 60DBO072891

OAH No. 2020010980

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 13, 2020.

Joanne Ross, Senior Counsel, and Trevor Carroll, Counsel, represented complainant Manual P. Alvarez, Commissioner of Business Oversight, Department of Business Oversight (DBO).

Respondent Robert Gonzalez, Jr., also known as Roberto Gonzalez Viramontes, Robert Gonzalez Viramontes, Jr., Roberto Gonzalez Viramontes, Jr., and Robert Gonzalez-Viramontes, did not appear and was not represented.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 13, 2020.

FACTUAL FINDINGS

Jurisdiction

1. The Department issued respondent a Mortgage Loan Originator (MLO) license on June 7, 2017.

2. On June 19, 2017, respondent filed an incomplete application for a finance lending license with the Commissioner (Application) under section 22101 of the California Financing Law (CFL) (Fin. Code, § 22000 et seq.). Respondent submitted the Application to the Commissioner by filing Form MU1 through the Nationwide Mortgage Licensing System & Registry (NMLS). On the Application, respondent entered a San Antonio, Texas address as his principal place of business; he characterized the business as a sole proprietorship of which he is the owner.

3. On December 30, 2019, complainant, while acting in his official capacity, filed two Accusations and a Statement of Issues, all under the same agency case number:

(a) an Accusation in Support of Order Barring Robert Gonzalez, Jr. from Any Position of Employment, Management or Control of Any Finance Lender, Broker, or Mortgage Loan Originator Pursuant to Financial Code section 22169;

(b) an Accusation to Revoke Mortgage Loan Originator License Pursuant to Financial Code section 22714, and

(c) a Statement of Issues in Support of Denial of California Financing Law License Application Pursuant to Financial Code section 22109.

4. Respondent timely filed a Notice of Defense and requested a hearing.

5. On January 30, 2020, complainant properly served respondent, at the address indicated in his Notice of Defense, with notice of the date and time of this hearing. On July 3, 2020, OAH sent notice to all parties with instructions for participating in this videoconference hearing. In response to an email from respondent, Ms. Ross confirmed that the hearing would go forward as scheduled, via videoconference. Complainant also confirmed to respondent by email that the hearing would proceed by videoconference, and respondent confirmed that his address for service was the address he entered on his Notice of Defense.

6. Neither respondent nor anyone acting on his behalf appeared at the hearing, despite complainant having timely served him with appropriate notice as Government Code section 11509 requires. At 9:35 a.m. on the day of hearing, therefore, the ALJ declared a default. At complainant's counsel's request, this matter proceeded as a default prove-up under Government Code section 11520.

Prior License Discipline by the Department of Real Estate

7. On November 19, 2015, the Department of Real Estate (DRE) issued an Accusation against respondent and his real estate corporation, Rokitto Enterprises, alleging several violations of the Real Estate Law, including conversion of trust funds of at least three customers.

8. After an administrative hearing, the Real Estate Commissioner issued a decision (DRE Decision) revoking respondent's real estate broker's license and the corporate real estate license of Rokitto Enterprises, effective November 10, 2016.

9. The Real Estate Commissioner found that respondent converted trust funds and issued at least five checks for proceeds due to consumers from real estate transactions, drawn on bank accounts that had insufficient funds to cover the checks. In at least one instance, respondent placed the proceeds of a loan refinancing into a non-trust account, and the funds were seized by tax authorities. Respondent also took an advance fee for loan costs for a refinancing transaction; he never refinanced the loan and he refused to refund the fees to the consumer.

Respondent's DBO Mortgage Loan Originator License

10. On May 25, 2017, respondent filed an application for an MLO license with the Commissioner under CFL section 22105.1, by filing form MU4 through the NMLS. On June 7, 2017, the Commissioner issued respondent an MLO license.

11. On his MU4 application, and in subsequent MU4 and MU2 filings, respondent failed to disclose the DRE Decision that revoked respondent's real estate broker's license, and failed to disclose that he had filed for bankruptcy in 2015 (see Factual Finding 13).

12. Respondent answered "no" to whether any state regulatory agency ever found him to be unethical; whether he was ever involved in a violation of laws governing a financial services-related business; whether he had been the cause of revocation of the business's license revocation; whether he had a license revoked, had his activities restricted, and been barred from engaging in a financial services-related business; and whether a final order had been issued against him for violations of laws against deceptive conduct. The correct answer to those questions would have been "yes." And though respondent truthfully answered a question about having received an order issued in connection with a license, he omitted the required explanation.

13. Respondent disclosed two dismissed bankruptcy filings from 2012 and 2013, but he failed to disclose that he filed a Chapter 7 Bankruptcy petition and received a bankruptcy discharge in 2015.

Respondent's Application for a Finance Lending License

14. Respondent applied for a finance lending license with the Commissioner on June 1, 2017, by filing Form MU1 through the NMLS. He applied as a sole proprietorship with a principal place of business in San Antonio, Texas.

15. On his Form MU1 application, respondent answered "No" to all five regulatory disclosure questions under Item C, and failed to disclose the DRE Decision revoking his broker's license. All the questions should have been answered in the affirmative. Respondent also answered "No" to Item H in the Financial Disclosures section, which reads, "In the past ten years has the entity or a control affiliate been the subject of a bankruptcy petition?" Respondent had, in fact, initiated bankruptcy proceedings in 2012, 2013, and 2015, and had received a Chapter 7 bankruptcy discharge in 2015.

The Department's Investigation

16. Monica Ahrens, a senior legal analyst employed by the Department for 19 years, was assigned to this case, which was referred by the Enforcement Division. Ms. Ahrens was asked to review the DRE decision and determine whether respondent had subsequently disclosed that decision in CFL applications and amendments.

17. Ms. Ahrens accessed the NMLS nationwide licensing system. She found that respondent used several names in his various filings, and that under one of them he had an MLO license with the Department. She found a 2015 bankruptcy filing that respondent had not disclosed in his MLO application. To ascertain whether all the names referred to respondent, Ms. Ahrens recommended engaging an investigator. Sean Borden was assigned to perform that investigation.

18. Mr. Borden, an investigator for the Department for six years and a certified peace officer for the State of California, testified that he received the assignment to investigate respondent from his supervising investigator. He attempted to confirm the identity of Robert Gonzalez, Jr., also known as Robert Gonzalez Viramontes, and found that he is the same person associated with the MLO and CFL license and the person whose real estate broker license was revoked by DRE. Mr. Borden evaluated the MLO and CFL records of Robert Gonzalez, Jr. He investigated filings in the NMLS system, and found in the CFL record numerous identifying documents, including a U.S. passport, Social Security card, and California Driver's License, and in the MLO record a U.S. passport that matched the CFL record. All identified the same date of birth. Mr. Borden concluded that the same individual submitted all the filings under somewhat different names.

19. Mr. Borden also visited the DRE office, where he read the file on Robert Gonzalez, Jr., and spoke with Ray Dagnino, a supervising special investigator. In the file, Mr. Borden found Robert Gonzalez, Jr.'s declaration to Mr. Dagnino, with a copy of a California Identification Card (bearing the same number as his California Driver's License); the declaration was filed in response to complaints DRE was investigating. Based on documents on file with the DRE and respondent's filings with the NMLS, Mr. Borden concluded that the real estate broker whose license was revoked in the DRE Decision is the respondent in this DBO proceeding. Robert Gonzalez, Jr., Robert Gonzalez Viramontes, Robert Gonzalez Viramontes Jr., and Roberto Gonzalez Viramontes Jr., are all the same person.

20. After Mr. Borden concluded his investigation, Ms. Ahrens, whose objective is to protect consumers, found that respondent did not meet the qualifications for either a CFL or an MLO license.

21. She obtained certified records from the Secretary of State, showing that respondent was the only control person for Rokitto Enterprises, named as a respondent in the DRE Decision. In his CFL broker license application and 16 subsequent amendments in the NMLS system, the accuracy of which DBO relies on, respondent did not disclose the DRE Decision nor his bankruptcy filing. Ms. Ahrens obtained certified copies of respondent's Chapter 7 voluntary petition in bankruptcy court, showing that the bankruptcy proceedings occurred before respondent applied for the CFL broker license. Respondent did disclose the 2012 and 2013 bankruptcy filings in his MLO application, showing that he knew he was required to disclose bankruptcy filings. The 2015 bankruptcy filing was more important than the previous two, revealing his financial difficulties.

22. Respondent filed an MLO application with 41 subsequent amendments. The NMLS website lists the requirements for license applicants, at the same site on which the application is found.

23. Meircee Boulahroud, a special administrator for mortgage licensing at DBO for the past one and one-half years, and a DBO employee for 11 years, explained the MLO license application process. An MLO is one who for compensation takes a loan application from a consumer and negotiates the terms with lenders. This activity requires an MLO license or endorsement from DBO or DRE. The MLO's employer company must hold a CFL or CRMLA (California Residential Mortgage Lending Law Act) license. To apply for an MLO license, one must create an account with the NMLS and Registry, submit an application, take a course and pass a test, and submit to and pass a credit check and background check. The MU4 Form, used to apply for an MLO license, asks for the applicant's history and disclosures, and must be signed and attested. An MU2 Form is an application filed for an officer, control person, or owner license. Requirements for an MLO license include 20 hours of pre-licensing education, passing a national test, and taking eight hours per year of courses in state and federal laws, ethics, loan products, and other subjects.

24. A DBO licensing examiner receives applications from the NMLS and reviews them; Ms. Boulahroud supervises the examiners. Under CFL section 22109.1, the DBO must deny an application unless the applicant demonstrates financial responsibility and good character.

25. The applicant may subsequently change information connected with the MLO license by making a supplemental filing. Each time a licensee makes a change through a supplemental filing, it must be attested. Respondent has submitted 42

submissions and attestations in connection with his MLO license. He still has not disclosed the DRE Decision, though he is required to do so.

26. Had respondent disclosed the DRE Decision on his MU4, Ms. Boulahroud would not have approved the application, because respondent would not have been able to demonstrate character and fitness sufficient to warrant a conclusion that he would operate fairly.

27. Specifically, the advance fee violation, the trust account violation, and the seizure of his non-trust account, discussed in the DRE Decision, are troubling and are substantially related to the duties of an MLO licensee. Respondent did not properly care for his consumers' funds and information, and collected fees he was not entitled to collect. These violations of a similar regulatory scheme, and the deceit and material misrepresentations inherent in his omissions on 42 filings, are sufficient cause to warrant revocation of respondent's MLO license and to bar him from the MLO industry.

28. Steven Fong, a licensing specialist in financing law for the past 15 years, reviews CFL license applications for compliance with requirements before sending them for approval. CFL licenses are for lenders and brokers, as opposed to MLO licenses. Mr. Fong reviews the background of companies and their principals, looking for a history of civil or regulatory violations and ensuring that the applicant company is viable and meets net worth requirements, in order to protect the public.

29. Mr. Fong reviewed respondent's CFL application and found the DRE had revoked his broker's license. Mr. Fong recommended denying the license application and barring respondent from the industry due to his violation of a similar regulatory scheme, and his fraud or deceit. With a CFL license, respondent would interact directly

with the public, gathering the personal financial information of consumers so they can buy homes or refinance loans, and collecting fees. The actions respondent engaged in and for which the DRE revoked his broker's license involved writing bad checks and making improper use of trust accounts, all substantially related to the duties of a person engaged in business under the CFL and demonstrating respondent's dishonesty, fraud, and deceit.

30. The MU1 Form provides information for an entity that is registered with the NMLS. The DRE action should have been disclosed in Regulatory Action Disclosure section, at item C. Questions 1 through 5 should have been answered "yes". On respondent's application, he did not disclose the DRE Decision, but he attested under penalty of perjury that his application was complete and accurate. The lack of disclosure was a false statement of material fact.

31. Mr. Fong recommended revocation and a bar for violation of a similar regulatory scheme and for fraud, deceit, and dishonesty.

Mitigation and Rehabilitation

32. Respondent offered no documentary or testimonial evidence of mitigation or rehabilitation.

LEGAL CONCLUSIONS

1. Under Government Code section 11520, subdivision (a), when a party fails to appear at a duly noticed hearing, "the agency may take action based on the respondent's express admissions or upon other evidence . . ." Respondent did not

appear at the hearing. His default was taken under Government Code section 11520, and complainant submitted evidence against him at the hearing.

2. The Commissioner may "bar from any position of employment, management, or control any finance lender, broker, mortgage loan originator, or any other person, if the commissioner finds" that the person has been held liable in an administrative judgment by a public agency for "any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business . . ." (Fin. Code, § 22169, subd. (a)(2).

3. The Commissioner "shall suspend or revoke any license" upon finding that "[t]he licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division;" or "[a] fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally." (Fin. Code, § 22714, subd. (a)(2) & (3).)

4. "The commissioner shall deny an application for a mortgage loan originator license 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 honestly, fairly, and efficiently within the purpose of this division." (Fin. Code, § 22109.1, subd. (a)(3).)

5. "For any licensee, a disciplinary action taken by the State of California . . . for an action substantially related to the activity regulated under this division may be ground for disciplinary action by the commissioner." (Fin. Code, § 22705.1, subd. (a).)

6. Every licensed mortgage lender and mortgage loan originator "shall, upon any change in the information contained in its license application . . . promptly file an amendment to such application setting forth the changed information." (Cal. Code Regs., tit. 10, § 1409.1, subd. (a).) A mortgage loan originator must file changed information in the MU4 Form and file exhibits thereto within 20 days of changes to the information, and prior to renewal. (Cal. Code Regs., tit. 10, §§ 1409.1, subd. (c), 1422.6.3.)

7. The commissioner may deny an application for a finance lender because of a false statement of a material fact in the application, or because the person responsible for the applicant's lending activities has, within the last 10 years, "committed an act involving dishonest, fraud, or deceit" if the act "is substantially related to the qualifications, functions, or duties of a person engaged in the business . . ." or has violated any provision of this regulatory scheme or "any similar regulatory scheme of the State of California . . ." (Fin. Code, § 22109, subd. (a)(1), (2) & (3).)

8. Cause exists under Financial Code section 22169 to bar respondent from any position of employment, management, or control of any finance lender, broker, or mortgage loan originator. The DRE Decision establishes that respondent committed acts involving dishonesty, fraud, or deceit reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of the CFL.

9. Cause exists under Financial Code section 22109.1, subdivision (a)(1), (2) and (3), to deny respondent's California finance lending application because the DRE Decision is evidence that 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 consistent with the purposes of the CFL.

10. Cause exists under Financial Code section 22714, subdivision (a)(3), to revoke respondent's MLO license for violation of California Code of Regulations, title 10, sections 1422.6 and 1409.1, subdivisions (a) and (c). The DRE Decision is a disciplinary order under Financial Code section 22705.1, subdivision (a), and constitutes a fact or condition that, had it existed at the time of the original MLO license application, reasonably would have warranted the Commissioner's denial of the application, and is therefore grounds for revocation under Financial Code section 22714, subdivision (a)(3).

ORDER

1. Respondent Robert Gonzalez, Jr., also known as Roberto Gonzalez Viramontes, Robert Gonzalez Viramontes, Jr., Roberto Gonzalez Viramontes, Jr., and Robert Gonzalez-Viramontes, is barred from any position of employment, management, or control of any finance lender, broker, or mortgage loan originator.

2. The mortgage loan originator license issued to respondent Robert Gonzalez, Jr., also known as Roberto Gonzalez Viramontes, Robert Gonzalez Viramontes, Jr., Roberto Gonzalez Viramontes, Jr., and Robert Gonzalez-Viramontes, is revoked.


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3. The application of respondent Robert Gonzalez, Jr., also known as Roberto Gonzalez Viramontes, Robert Gonzalez Viramontes, Jr., Roberto Gonzalez Viramontes, Jr., and Robert Gonzalez-Viramontes, for a finance lender license is denied.

DATE: August 11, 2020

DocuSigned by:

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings