

BEFORE THE
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
STATE OF CALIFORNIA

In the Matter of:

COMMISSIONER OF BUSINESS OVERSIGHT,

Complainant,

v.

SCOTT MASAMI MURAKAMI also known as
SCOTT MASAMI FENNEMA.,

Respondent.

Agency No. 1050053

OAH No. 2020090734

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Financial Protection and Innovation (previously the Department of Business Oversight) in the above-entitled matter, with technical or other minor changes as shown on the attached Errata Sheet, which is incorporated by reference, pursuant to Government Code section 11517(c)(2)(C).

This Decision shall become effective on May 12, 2021.

IT IS SO ORDERED THIS 12th day of April, 2021.



MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

ERRATA SHEET

(Changes to Proposed Decision – In the Matter of The Commissioner of Business Oversight v.
Scott Masami Murakami also known as Scott Masami Fennema)

- 1) On page 4 of the Proposed Decision, Paragraph Number 5 of Findings of Fact, line 1, delete “15” and replace with “30”.
- 2) On page 4 of the Proposed Decision, Paragraph Number 6 of Findings of Fact, line 2, delete “and”.
- 3) On page 5 of the Proposed Decision, Paragraph Number 7 of Findings of Fact, line 1, delete “DFPI0033” and replace with “DFPI0105”.
- 4) On page 5 of the Proposed Decision, Paragraph Number 7 of Findings of Fact, line 2, delete “ “ ”.
- 5) On page 5 of the Proposed Decision, Paragraph Number 7 of Findings of Fact, line 6, delete “ ” ”.
- 6) On page 6 of the Proposed Decision, Paragraph Number 14 C. of Findings of Fact, line 1, delete “An” and replace with “A”.
- 7) On page 6 of the Proposed Decision, Paragraph Number 14 C. of Findings of Fact, line 1, delete “April 1, 2011”.
- 8) On page 6 of the Proposed Decision, Paragraph Number 14 C. of Findings of Fact, line 3, add “on April 1, 2011.” at the end after “Inc.”.
- 9) On page 7 of the Proposed Decision, Paragraph Number 15 B. of Findings of Fact, line 1, delete “An” and replace with “A”.
- 10) On page 7 of the Proposed Decision, Paragraph Number 15 B. of Findings of Fact, line 1, delete “October 1, 2013”.
- 11) On page 7 of the Proposed Decision, Paragraph Number 15 B. of Findings of Fact, line 3, add “on October 1, 2013.” at the end after “Inc.”.

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- 12) On page 11 of the Proposed Decision, Paragraph Number 22 of Findings of Fact, line 1, replace “w” in “Horowitz” with “v” so that it reads “Horovitz”.
- 13) On page 13 of the Proposed Decision, Paragraph Number 2 of Principles of Law, line 6, replace “50104” with “50140”.

**BEFORE THE
DEPARTMENT OF FINANCIAL PROTECTION AND
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STATE OF CALIFORNIA**

In the Matter of:

**THE COMMISSIONER OF FINANCIAL PROTECTION AND
INNOVATION,**

Complainant,

v.

**SCOTT MASAMI MURAKAMI also known as SCOTT MASAMI
FENNEMA,**

Respondent.

NMLS No. 1050053 (Statement of Issues)

OAH No. 2020090734

PROPOSED DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter on December 21, 2020 by telephone and
videoconference.

Judy L. Hartley, Senior Counsel, Enforcement Division, Department of Financial Protection and Innovation (DFPI, formerly the Department of Business Oversight) represented complainant, Manuel P. Alvarez, DFPI commissioner. Scott Musami Murakami, respondent, represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 21, 2020.

STATEMENT OF THE CASE

It is the applicant's obligation to provide detailed information relating to work in the financial industry. Respondent failed to disclose all such information in response to questions on the required application form. Such failures to disclose are grounds to deny a mortgage loan originator (MLO) license. Respondent is subject to orders, a judgment, and an injunction in other states related to misconduct in offering mortgage assistance to consumers. In applying for a mortgage loan originator (MLO) license, respondent failed to disclose all such proceedings against him, as well as tax liens and his part in suspended corporations involved in the misconduct.

ISSUES

1. Whether respondent failed to provide information required by DFPI when he applied for an MLO license.
2. Whether respondent's failure to disclose information in his application is grounds to deny him an MLO license.

SUMMARY OF DECISION

Respondent's explanation for his failure to disclose required information when applying for an MLO license was unconvincing. Respondent did not present sufficient evidence of his financial responsibility, character, and general fitness for licensure. Respondent's MLO license application is properly denied.

FINDINGS OF FACT

Jurisdiction

1. In 2020, respondent applied to the DFPI commissioner for a MLO license. Respondent supplemented the application several times. DFPI did not issue a license, and instead filed the September 4, 2020 statement of issues. Respondent filed a Notice of Defense and timely requested a hearing.

Information Pertinent to MLO License

2. Respondent managed business entities before applying for an MLO license. He and the businesses were the subject of tax liens and administrative orders pertinent to an MLO license.

CONNECTICUT CONSENT ORDER

3. On February 15, 2013, as set out in Exhibit 16, the Banking Commissioner, Department of Banking, State of Connecticut, issued, after investigation, a consent order against State Law Group, a law firm that operated in California and was managed by respondent, and an attorney, Haben Hapte Tesfai, who was associated with State

Law Group. Under the consent order, State Law Group and Mr. Tesfai agreed and were ordered: (i) to pay a civil penalty of \$2,000 to the Connecticut Department of Banking upon issuance of the consent order; and (ii) to "immediately cease and desist from engaging or offering to engage in unlicensed debt negotiation activity in Connecticut in violation of Section 36a-671(b) of the Connecticut General Statutes, in effect prior to October 1, 2011, and of Section 36a-671(b) of the 2012 Supplement to the General Statutes"

4. Respondent acknowledged that he agreed to the consent order by signing it as the Office Manager of State Law Group. Mr. Tesfai likewise acknowledged agreement by signing the consent order as an individual party.

NEW MEXICO ORDER

5. On November 15, 2015, the Attorney General of New Mexico filed the Stipulated Final Order for Permanent Injunction and Monetary Relief with Defendant [respondent] (New Mexico Order), which respondent attached to Exhibit 2 as part of his MLO application. The New Mexico Order was filed in the United State District Court for the District of New Mexico, Civil Action Number 1:14-cv-00663-KG-KK, entitled *State of New Mexico, ex rel. Hector H. Balderas, Attorney General of New Mexico, Plaintiff/Petitioner, v. Byron Lee Landau, et al., Defendants/Respondents* (New Mexico Lawsuit).

6. The New Mexico Order resolved the issues in *Ex Parte First Amended Complaint for Violations of the . . . MARS Rule . . . and the New Mexico Unfair Practices Act (UPA) and Petition for Injunctive Relief*, filed in the New Mexico Lawsuit on February 17, 2015, which alleged that respondent accomplished wrongdoing by means of individual associates and business entities that he controlled as part of a common

enterprise. Among such entities were the now suspended California corporations described below, Time 2 Settle, Inc. and Mura Consulting.

7. As recited in the New Mexico Order, page DFPI0033, respondent admitted allegations that he "participated in practices in violation of the Unfair Practices Act and the Mortgage Assistance Relief Services Rule ('MARS Rule'), 16 C.F.R., Section 322, re-codified as Mortgage Assistance Relief Services ('Regulation O'), 12 C.F.R., Section 1015, in connection with the advertising, marketing, promotion, or offering of mortgage assistance relief services."

8. The District Court, at pages DFPI0037 through DFPI0040, permanently restrained and enjoined respondent from misrepresenting financial products and services in New Mexico.

9. The District Court, at pages DFPI0041, entered monetary judgments against respondent: (i) \$28,709.66 in consumer restitution; and (ii) \$15,000 in civil penalties and costs, to be paid in installments.

10. The New Mexico Order was signed on respondent's behalf by Thomas J. Borchard, Borchard & Callahan, California attorneys who represented respondent in the proceedings.

11. In an August 7, 2020 email, Exhibit 12, counsel for complainant inquired of the New Mexico Attorney General's office whether respondent was paying monies, including civil penalties, ordered by the court. The September 1, 2020 response was that respondent was current on installment payments.

TAX LIENS

12. The Internal Revenue Service (IRS) filed in the Official Records, County of Orange, a September 8, 2017 Notice of Federal Tax Lien, Exhibit 10, against respondent, in the amount of \$93,369.18, for the tax period ending December 31, 2012.

13. The IRS filed, again in the Official Records, County of Orange, an August 15, 2018 Notice of Federal Tax Lien, Exhibit 11, against respondent, in the amount of \$8,794.47, for the tax period ending December 31, 2016.

SUSPENDED CORPORATIONS

14. Respondent has been associated with Time 2 Settle, Inc., a California retail corporation, as shown in Exhibit 15.

A. On April 9, 2010, respondent filed with the Secretary of State a Statement of Information indicating that he was the Chief Executive Officer (CEO), Secretary, Chief Financial Officer (CFO), sole director, and agent for service of process for Time 2 Settle, Inc.

B. On September 2, 2014, respondent filed with the Secretary of State his resignation as the agent for service of process for Time 2 Settle, Inc.

C. An April 1, 2011 Certificate of Status from the Secretary of State indicates that the Franchise Tax Board suspended the powers, rights, and privileges of Time 2 Settle, Inc.

15. Respondent has been associated with Mura Consulting, a California consulting and marketing corporation, as shown in Exhibit 14.

A. On October 16, 2013, respondent filed with the Secretary of State a Statement of Information indicating that he was the CEO, Secretary, CFO, and sole director of Mura Consulting.

B. An October 1, 2013 Certificate of Status from the Secretary of State indicates that the Franchise Tax Board suspended Mura Consulting's powers, rights, and privileges.

Respondent's MLO Application

16. In applying for an MLO license, respondent provided information through the Nationwide Mortgage Licensing System (NMLS) on the required MU4, a form with questions the applicant must answer and requirements for explanation of the information submitted.

17. Respondent first applied for an MLO license by means of a January 10, 2020 MU4, Exhibit 2. Respondent submitted a total of seven supplemental MU4's in January and February 2020, each with substantially the same information. Each MU4 has the same set of "Disclosure Questions." Several of respondent's answers were inaccurate or incomplete.

A. Question (D): "Do you have any unsatisfied judgments or liens against you?" Respondent answered no and so failed to advise DFPI of the two tax liens noted above.

B. Question (J)(1)(a): "Has any domestic or foreign court ever: [T] (a) enjoined you in connection with any financial services-related activity?" Respondent answered no and so failed to advise DFPI of the Connecticut consent order, which effectively enjoined respondent from unlicensed debt negotiation activity in

Connecticut. In the revised February 17, 2020 MU4, respondent changed his answer to yes, but provided no information regarding the Connecticut consent order. The new yes answer appears to relate only to proceedings in New Mexico.

C. Question (K)(4): "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever: [redacted] (4) entered an order against you in connection with a financial services-related activity?" Respondent accurately answered yes, but provided an inadequate explanation as set out below.

D. Question (K)(9): "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever: [redacted] (9) entered an order concerning you in connection with any license or registration?" Respondent accurately answered yes, but provided an inadequate explanation as set out below.

E. Question (M): "Based upon activities that occurred while you exercised control over an organization, has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever taken any of the actions listed in (K) through (L) above against any organization?" Respondent accurately answered yes, but provided an inadequate explanation as set out below.

18. Each MU4 requires "Disclosure Explanations" for yes answers. Respondent provided one explanation for his yes answers:

Between 2013 and 2015, I managed a Law Firm, under the direction of an Attorney. I acted as the main point in contact, in addition to handling complaints in the manner

directed by the Attorney. In 2014, the Law Firm began receiving complaints from the Attorney General ("AG") in New Mexico with respect to some files which were allegedly mishandled by our office. Although I relayed these complaints from the AG to the Attorney of the Firm, the Attorney failed to respond to me or New Mexico.

Respondent explains that he was unaware of any wrongful conduct. He continues:

Given . . . my inability to afford . . . an attorney for a defense through trial, I decided it would be best to enter into a Final Stipulated Order which only takes effect in the State of New Mexico. The State of New Mexico never proved that I violated any regulations or laws nor did I admit so when entering into the Final Stipulated Order. I simply entered into the Order to make this lawsuit go away.

19. Respondent signed each MU4, adopting the following attestation under penalty of perjury that his application was true, accurate, and complete:

I . . . swear (or affirm) that I executed this application on my own behalf, that I am attesting to and submitting this application, and that I agree to and represent the following:

(1) 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, or un-sworn

falsification to authorities, or similar provisions as provided by law;

(2) To the extent any information previously submitted is not amended and hereby, such information remains accurate and complete;

(3) That the jurisdiction(s) to which an application is being submitted may conduct any investigation into my background, in accordance with all laws and regulations;

(4) To keep the information contained in this form current and to file accurate supplementary information on a timely basis; and

(5) To comply with the provisions of law, including the maintenance of accurate books and records, pertaining to the conduct of business for which I am applying.

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.

I verify that I am the named person above and agree to the language stated.

Respondent's Evidence

20. Kristin Bracic, a California attorney who has known respondent for approximately 15 years, testified to his competence and good character. Respondent and Ms. Bracic's husband were colleagues at Millennium Mortgage, where respondent worked as a loan officer. Ms. Bracic has trusted respondent with personal information relating to finances and has taken his advice on handling debt. She stated that respondent is a good father to all his children, both his step and biological children. He is, in her view, a person one can always count on.

21. Markus Gerszi has known respondent for approximately 25 years. He was generally aware of legal proceedings against respondent, but not in detail. He would trust respondent with his finances and has more than once gone to him for guidance. Mr. Gerszi has never known respondent to be dishonest or act with malicious intent.

22. Matthew Horowitz is the principal of M Squared Safety, LLC, which is a risk management consulting company. It advises on workplace safety, including compliance with federal OSHA (Occupational Safety and Health Administration). As his employer, Mr. Horowitz has known respondent for four or five years. He has entrusted respondent with a company credit card and personal information without incident. He would trust respondent with his personal finances and even his daughters.

23. Respondent submitted an MLO license application approximately five years ago, but withdrew it on the recommendation of an NMLS administrator, given that the proceedings against him in New Mexico had not been resolved. Respondent submitted his current application after settling with the New Mexico authorities, as described above.

24. Respondent did not dispute the facts presented on behalf of the DFPI commissioner. He acknowledged that the documentation portrays his situation accurately.

25. Respondent said he did not include the Connecticut consent order in his application out of forgetfulness. The proceedings were against a law firm and, while respondent managed the firm, he is not a lawyer and believes that no conduct of his caused the State of Connecticut to proceed as it did.

26. Respondent was hampered in disclosing all details of his employment, and especially his New Mexico dealings. After investigation began there, the lawyer in charge at the New Mexico law firm stopped communicating both with respondent and the New Mexico Attorney General.

27. Respondent acknowledged that he ought to have provided more information in his application, but he found the MU4 confusing. He tried to learn from another person what the application should include, but the advice was faulty. Respondent said he thinks he did his best to complete the application properly.

28. Respondent did not disclose the IRS liens because he was negotiating a compromise and mistakenly believed that he need not reveal them before a compromise was reached. Respondent and the IRS compromised on the liens and respondent is current on his installment payments. He believes that the liens should no longer be considered liens, having been revised by agreement.

29. Respondent testified to his passion to help homeowners in dealing with mortgages and financing. He worked as a loan officer before 2013 and believes he helped many homeowners to leverage their mortgages and manage debts. He was humbled by the New Mexico proceedings against him, realized he was not in a good

business, and left. Respondent hopes he may more effectively help homeowners with debt if he obtains an MLO license.

30. Respondent married in 2013 and is devoted to his three children, a three-year old and two older stepchildren.

PRINCIPLES OF LAW

1. Under Evidence Code sections 115 and 500, respondent bears the burden of proof. The standard of proof is proof by a preponderance of the evidence. To prevail and to prove that he is entitled to an MLO license, respondent must demonstrate, as stated in Financial Code section 22109.1, subdivision (a)(3), his financial responsibility, character, and general fitness for licensure. Respondent's showing must command the confidence of the community and warrant a determination that, as a mortgage loan originator, respondent will operate honestly, fairly, and efficiently and according to all pertinent laws and regulations.

2. Governing this matter are parallel provisions in the California Financing Law (CFL), codified at Financial Code sections 22000 through 22780.1, and the California Residential Mortgage Lending Act (CRMLA), codified at Financial Code sections 50000 through 50706. An applicant for a mortgage loan originator license must meet substantially the same requirements under Financial Code sections 22105.1 and 50104. The pertinent parts of the latter section states:

(a) An applicant for a license as a mortgage loan originator shall apply by submitting the uniform form prescribed for that purpose by the [NMLS] and Registry. The commissioner

may require the submission of additional information or supporting documentation to the department. [¶] . . . [¶]

(e) In connection with an application for a license as a mortgage loan originator, the applicant shall, at a minimum, furnish to the [NMLS] and Registry information concerning the applicant's identity, including the following: [¶] . . . [¶]

(2) Personal history and experience in a form prescribed by the [NMLS] and Registry, including the submission of authorization for the [NMLS] and Registry and the commissioner to obtain . . . the following: [¶] . . . [¶]

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

3. Requirements for licensure under Financial Code sections 22109.1 and 50141 are substantially the same. The former states in pertinent part:

(a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings: [¶] . . . [¶]

(3) 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.

(4) The applicant has completed the prelicensing education requirement described in Section 22109.2.

(5) The applicant has passed a written test that meets the test requirement described in Section 22109.3.

(6) The applicant is employed by, and subject to the supervision of, a finance lender or broker that has obtained a license from the commissioner pursuant to this division.

(b) Before denying a license under this section, the commissioner shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and shall have all the powers granted under that chapter.

4. Provisions of California Code of Regulations, title 10, sections 1422.6.2 and 1950.122.5.2 are substantially the same. The latter states:

(a) The Commissioner's finding required by subdivision (c) of Section 50141 of the California Residential Mortgage Lending Act 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.

(b) An applicant for a mortgage loan originator license shall authorize NMLS to obtain the applicant's current credit report. The credit report will be used as needed to validate

the applicant's responses to the electronic application form, in order to support the Commissioner's finding required by subdivision (c) Section 50141 of the California Residential Mortgage Lending Act.

(c) An applicant may be precluded from obtaining a mortgage loan originator license where his or her personal history includes:

(1) Any liens or judgments for fraud, misrepresentation, dishonest dealing, and/or mishandling of trust funds, or

(2) Other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant.

ANALYSIS

1. For years, respondent and entities he controlled and law firms he managed were acting illegally, promising mortgage holders relief from debt, but not by legal means. Respondent exited the illegal business and shut down the entities that perpetrated the wrongdoing only after he was prosecuted and investigated by government authorities, including the State of Connecticut and New Mexico.

2. Respondent increased the obstacles to licensure that his illegal conduct raised by failing to disclose the conduct when applying for an MLO license. Respondent repeatedly supplemented his application, yet never provided much pertinent information. The missing information was crucial. He disclosed the

proceedings in New Mexico, but omitted those in Connecticut, so that DFPI could not tell, until it investigated, that the New Mexico wrongdoing was not an anomaly, and rather may be considered part of entrenched practices, orchestrated with complicit law firms.

3. Respondent's testimony that he tried to find out from others what should be included in his MU4's was vague and unconvincing. Respondent has managed businesses in several states. He has been in the financial industry for the past five years and more. At the hearing he proved himself articulate and knowing. It is not credible that his MLO license application was incomplete, indeed misleading, only because he relied on another or other persons or because he was confused by the questions. In fact the questions of the MU4 are clear and the reasons behind them should be unmistakable to an applicant like respondent. He must have known that any questionable conduct of his relating to financial matters, especially mortgage-related, should be disclosed, yet respondent failed to disclose much crucial information.

4. Respondent was required to and did attest under penalty of perjury to the completeness and accuracy of the information he disclosed. The incompleteness and inaccuracy of respondent's application shows that his representations, even under oath, have not been trustworthy.

5. Respondent should have disclosed his legal obligations, including payment schedules that, commendably, he has honored, because they reveal that he is under financial pressure and could be tempted into wrongdoing again or that his judgment in financial matters might be clouded because of his legal and financial difficulties. Instead of full disclosure and full acknowledgement of wrongdoing, respondent omitted information and played down the significance of his misconduct in the past. He implied in his MU4 explanation of the settlement of the proceedings in

New Mexico that he yielded only because he could not afford a lawyer. That implication is not trustworthy. (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940; fully acknowledging wrongfulness of past action is an essential step toward rehabilitation.)

6. Respondent's care for his family and the regard shown by his character witnesses show that he has admirable qualities and is quite capable of helping homeowners in financial difficulty. His experience in the financial industry indicates that he could be a good and efficient MLO licensee. But on balance, respondent's evidence fell far short of demonstrating financial responsibility, good character, and general fitness for licensure. Respondent's showing does not command the confidence of the community and does not warrant a determination that, as an MLO licensee, respondent would operate not just honestly, fairly, and efficiently, but also according to all pertinent laws and regulations.

CONCLUSIONS OF LAW

1. Respondent failed in multiple ways to provide information required by DFPI when he applied for an MLO license. Much important and required information, such as that relating to the Connecticut consent order and tax liens, was absent altogether. Other equally important information, such as that relating to the New Mexico proceedings, was incomplete in such a way as to make a fair decision on licensure impossible.

2. Respondent's failure to disclose information is grounds to deny him an MLO license. The information he failed to disclose reveals a pattern of illegal behavior

relating to mortgages and financing. The failure to disclose such information indicates that respondent may be untrustworthy.

ORDER

The application of respondent, Scott Musami Murakami, for a mortgage loan originator license, is denied.

DATE: Jan 4, 2021



THOMAS Y. LUCERO

Administrative Law Judge

Office of Administrative Hearings