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11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
12 OF THE STATE OF CALIFORNIA

13 In the Matter of:	)	NMLS LICENSE NO.: 233703
)	
14 THE COMMISSIONER OF FINANCIAL	)	FIRST AMENDED ACCUSATION
15 PROTECTION AND INNOVATION,)	
	)	OAH Case No.: 2022020483
16 Complainant,)	
	)	Hearing Dates: August 1 - 3, 2022
17 v.	)	Hearing Time: 9:00 a.m.
	)	Location: 320 West 4th Street, Suite 630
18 MARK L. BRANDENBURGER,	)	Los Angeles, CA 90013
	)	Call-In No.: (916) 245-8850
19 Respondent.	)	Conf. ID: 565 198 277 #
	)	Judge: Unassigned
)	
)	

22
23 Clothilde V. Hewlett, the Commissioner of Financial Protection and Innovation
24 (Commissioner), is informed and believes, and based on such information and belief, alleges and
25 charges Respondent Mark L. Brandenburger (Brandenburger) as follows.

26 I.

27 **Jurisdiction**

28 1. The Commissioner has jurisdiction over the licensing and regulation of persons

1 engaged in the business of making, servicing, or brokering residential mortgage loans, including
2 mortgage loan originators (hereinafter, MLO or MLOs), under the California Financing Law (CFL)
3 (Fin. Code, § 22000 et seq.) and the California Residential Mortgage Lending Act (CRMLA) (Fin.
4 Code, § 50000 et seq.). The Commissioner is authorized to administer the CFL, CRMLA, and the
5 rules and regulations promulgated in title 10 of the California Code of Regulations (CCR). The
6 Commissioner has continuous authority to exercise the powers authorized by the CFL and CRMLA
7 even after a license has been surrendered, suspended, or revoked.

8 2. Brandenburger first received his MLO license from the Commissioner on June 3,
9 2020.

10 3. Since December 2019, Brandenburger has been the designated control person at Clear
11 Capital Mortgage, Inc., a CFL-licensed lender.

12 4. Under the provisions of Financial Code sections 22109.1, 22169, 22172, 22704,
13 22705, 22714, and 22755 of the CFL, the Commissioner brings this action to revoke Brandenburger’s
14 MLO license because Brandenburger violated the Nationwide Mortgage Licensing System and
15 Registry (NMLS) student Rules of Conduct (ROC) by using the services of Danny Yen, d/b/a Real
16 Estate Educational Services (REES) to complete his NMLS-approved online pre-licensure (PE)
17 and/or continuing education (CE) courses, which in turn constitutes a violation of the licensing
18 requirements of the Department of Financial Protection and Innovation under the CFL and under
19 federal law.

20 5. Specifically, Brandenburger used and compensated REES to obtain credit through
21 both an online fraud scheme and an in-person fraud scheme. In the online fraud scheme,
22 Brandenburger had REES complete an online course on his behalf in 2020. The course for which
23 Brandenburger received credit was completed by REES through an IP address associated with REES.
24 Additionally, under the in-person fraud scheme, Brandenburger paid REES to annually report
25 completion of an in-person course for four years from 2017 to 2020. REES did not teach the in-
26 person course and Brandenburger never attended the in-person course nor completed the required test
27 or course work to receive course credit.

28 6. The original Accusation seeking revocation in the instant matter was issued on

1 December 20, 2021, and served upon Brandenburger on December 26, 2021, throughout which time
2 Brandenburger maintained an active MLO license with the Commissioner.

3 **II.**

4 **Statement of Facts**

5 *NMLS Pre-Licensing and Continuing Education*

6 7. The State Regulatory Registry LLC (SRR), which owns and operates the NMLS,
7 administers PE and CE and Uniform State Test protocols. Title V of Public Law 110-289, the Secure
8 and Fair Enforcement for Mortgage Licensing Act of 2008 (the SAFE Act), requires that state-
9 licensed MLOs complete PE prior to initial licensure and annual CE thereafter. (See Fin. Code, §§
10 22109.2 and 22109.5.)

11 8. In order to meet PE requirements contemplated under the SAFE Act, state-licensed
12 MLOs must complete 20 hours of NMLS-approved education. (Fin. Code, § 22109.2.)

13 9. In order to meet CE requirements contemplated under the SAFE Act, state-licensed
14 MLOs must complete eight hours of NMLS-approved education on an annual basis. (Fin. Code, §
15 22109.5.)

16 *REES*

17 10. REES, NMLS course provider number 1405046, was an NMLS-approved course
18 provider during the years 2017 to 2020.

19 11. The NMLS had approved REES to offer one in-person 8-hour “DBO-SAFE Act
20 Comprehensive: Mortgage Continuing Education” course.

21 12. REES was never approved by the NMLS to offer online PE or CE to MLOs.

22 13. During all times relevant herein, REES had its primary place of business located at
23 3643 Adams Street, Carlsbad, California.

24 14. During all times relevant herein, REES, by and through Danny Yen, maintained with
25 his Internet Service Provider an IP address at 76.88.84.139 (the IP Address). The IP Address assigned
26 to Danny Yen is associated with REES’ business address, 3643 Adams Street, Carlsbad, California.

27 *REES Investigation*

28 15. The Mortgage Testing and Education Board (MTEB), which was created by SRR, has

1 approved “Administrative Action Procedures for S.A.F.E. Testing and Education Requirements”
2 (AAP), which extends administrative authority to the MTEB to investigate alleged violations of the
3 NMLS student Rules of Conduct (ROC).

4 16. The AAP also extends administrative authority to the MTEB and SRR to investigate
5 alleged violations of the NMLS Standards of Conduct (SOC), which apply to all NMLS–Approved
6 course providers.

7 17. In late 2020, SRR obtained information concerning suspicious activity and that that
8 information identified a possible MLO education cheating scheme coordinated by and implemented
9 through REES and its owners and operators, including Danny Yen. Based on that information, and
10 pursuant to the AAP, SRR initiated an investigation into the matter.

11 *Findings of SRR and Department of Financial Protection & Innovation Investigation*

12 18. On or about December 15, 2020, SRR staff received a “suspicious relations” report
13 involving suspected individuals completing online NMLS–approved education courses on behalf of
14 another.

15 19. Subsequent SRR research found at least 113 education students associated with taking
16 online PE and/or CE courses from the IP Address in Carlsbad, California (the SRR report).

17 20. Brandenburger was identified in the SRR report as one of the 113 students that had
18 completed PE and/or CE from the IP Address in Carlsbad, California and who received NMLS
19 course credit under an online fraud scheme.

20 21. The Commissioner has determined that the IP Address in question belonged to Danny
21 Yen, REES’ owner and operator.

22 22. Brandenburger neither resides nor works at 3643 Adams Street, Carlsbad, California,
23 the physical address associated with the IP Address identified by the Commissioner as belonging to
24 REES.

25 23. Based upon the results of the SRR report and the IP Address information, it was
26 determined that Brandenburger had used the services of REES and compensated REES to complete
27 one class during 2020 in violation of the ROC.

28 24. Additional investigation revealed evidence that REES fraudulently provided course

1 credit to MLOs who had never attended and completed REES' 8-hour in-person CE course in
2 Westminster, California in an in-person fraud scheme.

3 25. Brandenburger was identified in NMLS records as receiving course credit for REES'
4 8-hour in-person CE course in 2017, 2018, 2019, and 2020. It was determined that none of these
5 courses ever took place and Brandenburger never attended an in-person course corresponding to the
6 course credits. Consequently, Brandenburger never took a knowledge examination required for
7 course credit. It was determined that Brandenburger had used REES to obtain four years of course
8 credits from 2017 to 2020 in violation of the ROC under the in-person fraud scheme.

9 26. The ROC provide in relevant part:

10 ROC 4: I will not divulge my login ID or password or other login
11 credential(s) to another individual for any online course.

12 ROC 5: I will not seek or attempt to seek outside assistance to complete
13 the course.

14 ROC 9: I will not engage in any conduct that is dishonest, fraudulent,
15 or would adversely impact the integrity of the course(s) I am
16 completing and the conditions for which I am seeking licensure or
17 renewal of licensure.

18 27. By using the services of another to complete his PE and/or CE and paying for
19 fraudulent course credits through a non-existent course, Brandenburger violated ROC 4, 5, and 9, and
20 engaged in conduct that was dishonest, fraudulent, and that adversely impacted the integrity of the
21 courses Brandenburger completed and the conditions and qualifications for which Brandenburger
22 sought licensure or renewal of licensure.

23 **III.**

24 **Violations of the CFL**

25 28. The Commissioner may revoke an MLO license if a licensee violates any provision of
26 the CFL, or any rules or regulations adopted thereunder. (Fin. Code, § 22172, subd. (a)(1).)

27 29. As described in paragraphs 10 through 27, above, Brandenburger used another to
28 complete his PE and/or CE in violation of the ROC under the online fraud scheme. As described in

1 paragraphs 24 through 25, Brandenburger used REES to obtain four years of course credits from
2 2017 to 2020 under the in-person fraud scheme. In using another to complete his required education
3 and in falsely obtaining course credits through an in-person course that he never attended,
4 Brandenburger violated Financial Code section 22755, subdivisions (b), (g), (h), and (j), which
5 provide in pertinent part:

6 It is a violation of this division for a mortgage loan originator to do any
7 of the following:

8 (b) Engage in any unfair or deceptive practice toward any person.

9 (g) Fail to make disclosures as required by this division and any other
10 applicable state or federal law, including regulations thereunder.

11 (h) Fail to comply with this division or rules or regulations
12 promulgated under this division, or fail to comply with any other state
13 or federal law, including the rules and regulations thereunder,
14 applicable to any business authorized or conducted under this division.

15 (j) Negligently make any false statement or knowingly and willfully
16 make any omission of material fact in connection with any information
17 or reports filed with a governmental agency or the [NMLS] or in
18 connection with any investigation conducted by the commissioner or
19 another governmental agency.

20 30. Thus, Brandenburger violated provisions of the CFL, and under Financial Code
21 section 22172, subdivision (a)(1), Brandenburger's MLO license must be revoked.

22 IV.

23 **Financial Responsibility, Character, and General Fitness**

24 31. The Commissioner must deny an MLO license if the licensee fails to meet the
25 minimum criteria for licensure, which includes a requirement that the applicant "has demonstrated
26 such financial responsibility, character and general fitness as to command the confidence of the
27 community and to warrant a determination that the [MLO] will operate honestly, fairly, and
28 efficiently within the purposes of this division." (Fin. Code, § 22109.1, subd. (a)(3).)

32. As described in paragraphs 10 through 27, above, Brandenburger violated ROC 4, 5,
and 9 by using the services of another, REES, to complete his PE and/or CE during 2020.

1 (b) Within 15 days from the date of a notice of intention to issue an
2 order pursuant to subdivision (a) or (b), the person may request a
3 hearing under the Administrative Procedure Act (Chapter 4.5
4 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of
5 the Government Code). Upon receipt of a request, the matter shall be
6 set for hearing to commence within 30 days after such receipt unless
7 the person subject to this division consents to a later date. If no hearing
8 is requested within 15 days after the mailing or service of such notice
9 and none is ordered by the commissioner, the failure to request a
10 hearing shall constitute a waiver of the right to a hearing.

11 38. Financial Code section 22172 provides in pertinent part:

12 (a) The commissioner may do one or more of the following:

13 (1) Deny, suspend, revoke, condition, or decline to renew a mortgage
14 loan originator license for a violation of this division, or any rules or
15 regulations adopted thereunder.

16 (2) Deny, suspend, revoke, condition, or decline to renew a [MLO]
17 license if an applicant or licensee fails at any time to meet the
18 requirements of Section 22109.1 or 22109.4, or withholds information
19 or makes a material misstatement in an application for a license or
20 license renewal.

21 **VI.**

22 **Prayer**

23 For the reasons set forth above, the Commissioner finds that Brandenburger participated in an
24 education fraud scheme by using REES to complete his PE and/or CE coursework under both the
25 online fraud scheme and the in-person fraud scheme in violation of the ROC and Financial Code
26 section 22755, subdivisions (b), (g), (h), and (j). Furthermore, Brandenburger has not demonstrated
27 the financial responsibility, character, and general fitness required under Financial Code section
28 22109.1, subdivision (a)(3) of the CFL to continue to hold an MLO license.

Accordingly, the Commissioner has grounds to revoke Brandenburger's MLO license under
Financial Code section 22172, subdivisions (a)(1) and (a)(2).

In the alternative, the Commissioner also has grounds to bar Brandenburger from any position
of employment with, or management or control of, any finance lender, broker, program administrator,

1 or any other person, as an MLO under Financial Code section 22169.

2 WHEREFORE IT IS PRAYED that the MLO license issued to Mark L. Brandenburger be
3 revoked. In the alternative, it is prayed that Mark L. Brandenburger be barred from any position of
4 employment with, or management or control of, any finance lender, broker, program administrator, or
5 employment as an MLO.

6 Dated: March 14, 2022
7 Los Angeles, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection &
8 Innovation

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10 By: _____
11 Allard C Chu
12 Senior Counsel
13 Enforcement Division
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