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BEFORE THE  
DEPARTMENT OF FINANCIAL INNOVATION AND PROTECTION  
STATE OF CALIFORNIA

In the Matter of:  
COMMISSIONER OF FINANCIAL PROTECTION  
AND INNOVATION,  
  
                                Complainant,  
  
v.  
HERBERT EDWIN SLEZINGER JR.,  
  
                                Respondent.

Case No. 1980702

OAH No.: 2020120654

FINAL DECISION AFTER  
RECONSIDERATION

**Procedural history**

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on March 22, 2021.

Judy L. Hartley, Senior Counsel, and Alicia F. Arman, Counsel, Department of Financial Protection and Innovation ("Department"), represented the Commissioner of Financial Protection and Innovation ("Commissioner").

Peter D. Collisson, Esq., represented Respondent Herbert Edwin Slezinger Jr.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on March 22, 2021.

Administrative Law Judge Heller issued a Proposed Decision on April 21, 2021, denying Respondent a Mortgage Loan Originator license. The Department adopted the Proposed Decision with minor technical changes as its Decision on July 16, 2021.

1 Respondent submitted a petition for reconsideration on July 21, 2021.

2 The Commissioner granted the petition for reconsideration on August 12, 2021,  
3 and ordered optional briefing on the following two questions:  
4

- 5 1) Is it appropriate for the Department to take official notice of Exhibit 6 to  
6 Respondent's Petition for Reconsideration ("PACER screenshot") and  
7 enter it into the record pursuant to Government Code section 11515?  
8 2) Is Respondent fit for licensure based on the evidence now in the record?

9 Each party submitted a brief by the September 13, 2021 deadline in the Order  
10 Granting Reconsideration. On September 14, 2021, Respondent submitted an  
11 additional brief, which Respondent described as a "reply brief." As the briefing deadline  
12 had passed, this brief was not considered.

### 13 **Factual Findings**

14 The Commissioner adopts the following factual findings from the Decision (with  
15 minor technical changes):  
16

17 1. On June 12, 2020, Respondent filed an application for a mortgage loan  
18 originator (MLO) license with the Commissioner under the California Financing Law  
19 (CFL) (Fin. Code, § 22000 et seq.) and the California Residential Mortgage Lending Act  
20 (CRMLA) (Fin. Code, § 50000 et seq.). "'Mortgage loan originator' means an individual  
21 who, for compensation or gain, or in the expectation of compensation or gain, takes a  
22 residential mortgage loan application or offers or negotiates terms of a residential  
23 mortgage loan." (Fin. Code, §§ 22013, subd. (a), 50003.5, subd. (a).) Respondent  
24 applied by filing a "Form MU4" through the Nationwide Multistate Licensing System and  
25 Registry (NMLS). Respondent signed the Form MU4 attesting that the answers were  
true and complete to the best of his knowledge.

26 2. Question (J)(1)(a) on Form MU4 asks: "Has any domestic or foreign court  
27 ever: [¶] (a) enjoined you in connection with any financial services-related activity?"  
28 (Exhibit 2, p. DFPI 29.) Respondent answered "No."

1  
2 3. Question (K)(8) on Form MU4 asks: "Has any State or federal regulatory  
3 agency or foreign financial regulatory authority or self-regulatory organization (SRO)  
4 ever: [¶] . . . [¶] (8) issued a final order against you based on violations of any law or  
5 regulations that prohibit fraudulent, manipulative, or deceptive conduct?" (Exhibit 2, pp.  
6 DFPI 29-30.) Respondent answered "Yes."

7 4. Mortgage loan originator applicants using Form MU4 are required to give  
8 an "Event Explanation Detail" for every disclosure answered "Yes" and upload  
9 supporting documentation. Respondent's explanation for his "Yes" answer to Question  
10 (K)(8) was: "In the early 1980's I was employed at Heritage Bank. The entire Board of  
11 Directors conceived a stock sale scheme that resulted in them and me being sued by  
12 the SEC. They entered into a consent decree; I did not agree. Nevertheless, I and they  
13 were ordered not to violate Rule 10b5. The order was issued in the 1980's and the bank  
14 was closed in the 80's. I have since spent an entire 40-year career in community  
15 banking and have often interacted with bank shareholders without any disapproval by  
16 regulators. I spoke to the regulators about possibly removing the SEC decree, and while  
17 they were willing to discuss the possibility, they wanted so much information that I  
18 decided the effort was, on the whole, not a productive use of my time. Thus, while the  
19 order remains intact, it is effectively ancient history." (Exhibit 2, p. DFPI 31.)  
Respondent did not upload any supporting documentation for the explanation.

20 5. On July 13, 2020, Sandra Roldan, a Financial Institution Examiner for the  
21 Department, posted two license item deficiency notes in NMLS regarding the  
22 application. The first stated, "Your MU4 form discloses a 'yes' response to Regulatory  
23 Action disclosure question K-8. Please upload the applicable documents concerning the  
24 final order issued against you by the regulatory agency .... " (Exhibit 3, p. DFPI 35.) The  
25 second stated, "Please have a CA-DBO licensed company request sponsorship of your  
26 license and update the Employment History and Identifying Information sections of your  
27 Individual MU4 with your new employment. An active license will not be approved  
28 without a sponsorship request from a CA-DBO licensed company .... " (*Ibid*) At the time  
Roldan posted the deficiency notes, the Department was named the Department of  
Business Oversight (DBO); it changed its name effective September 29, 2020.

1           6.       With respect to the first item, Respondent amended his Form MU4 on July  
2 14, 2020, to upload a document entitled "SEC News Digest." The digest, dated  
3 November 8, 1990, included an entry under the headline "Herbert Slezingher, Jr.  
4 Enjoined" stating, "On November 2, 1990, the U.S. District Court, Central District of  
5 California, issued a Final Judgment enjoining Herbert E. Slezingher, Jr. from violating  
6 Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. The judgment  
7 was based on Slezingher's consent, without admitting or denying the allegations of the  
8 complaint, after the Court had heard the evidence in the Commission's case-in-chief at  
9 trial. [¶] The Commission charged defendants with manipulating the stock of Heritage  
10 Bank, Anaheim, California, and its successor Heritage Bancorp (Heritage) by: rewarding  
11 employees for performance in stock sales contests; making loans to finance stock  
12 purchases with certificates held in 'safekeeping'; having employee stock purchase plans  
13 buy stock exceeding employee commitments; continuously soliciting purchasers for  
14 stock coming on the market; and touting the stock's performance and prospects.  
15 Slezingher was Executive Vice President of Heritage. The other defendants, Heritage  
16 directors or officers, previously consented to judgments against them ...." (Exhibit 4, p.  
17 DFPI 50.)

18           7.       With respect to the second item, Respondent emailed Roldan on July 14,  
19 2020, stating, "It is my understanding licenses can be issued as approved but inactive. I  
20 respectfully request that my application be approved as 'approved inactive'. I do not  
21 have a current sponsor and do not know any specific mortgage company and want to  
22 locate and evaluate several of them in my immediate area." (Exhibit 5, pp. DFPI 57-58.)  
23 On July 17, 2020, Roldan emailed a reply about both items, stating, "The document you  
24 uploaded concerning regulatory actions is not adequate. You must upload the complete  
25 set of documents applicable to the regulatory action (i.e., court documents, regulatory  
26 order(s), etc.). Assuming all license item requirements have been met and only the  
27 sponsor requirement is remaining, a license will be approved-inactive." (*Ibid.*)

28           8.       On July 17, 2020, Respondent further amended his Form MU4 to upload  
the judgment against him in the civil action. The "Final Judgment as to Defendant  
Herbert E. Slezingher, Jr." (Judgment) "permanently restrains and enjoins [Respondent]  
from violating Section 10(b) of the Securities Exchange Act of 1934 ....and Rule 10b-5



1 promulgated thereunder .... " (Exhibit 6, pp. DFPI 71-73.) The Judgment states  
2 Respondent consented to its entry without admitting or denying the allegations of the  
3 complaint. The Judgment also specifically restrains and enjoins Respondent from: "a)  
4 employing any device, scheme or artifice to defraud, [¶] b) making any untrue statement  
5 of a material fact or omitting to state a material fact necessary in order to make the  
6 statements made, in the light of the circumstance under which they were made, not  
7 misleading, or [¶] c) engaging in any act, practice or course of business which operates  
8 or would operate as a fraud or deceit upon any person, in connection with the purchase  
or sale of any security." (*Ibid*)

9           9.       On July 31, 2020, Roldan posted two more license item deficiency notes  
10 in NMLS concerning the application. The first stated, "Your MU4 form discloses a 'no'  
11 response to Civil Judicial Disclosure Question J-1. However, the court records you  
12 provided indicate that you were involved in a financial services related civil case."  
13 (Exhibit 3, p. DFPI 35.) The second stated, "Your MU4 form discloses a 'no' response to  
14 Regulatory Action Disclosure question (K)(1-9); however, our records indicate that one  
15 or more questions should have been answered 'yes' due to the action taken by the  
16 Securities and Exchange Commission outlined in the civil case court [*sic*] that you  
17 uploaded to your nmls record."<sup>1</sup> (Exhibit 3, pp. DFPI 35-36.) Both notes stated, "Please  
18 provide (1) an amended filing through NMLS, in addition to, (2) a detailed explanation of  
the circumstances and, (3) upload any applicable legal documents .... " (*Ibid.*)

19           10.     On August 4, 2020, Respondent emailed a reply to Roldan stating, "I will  
20 continue to seek a copy of the Civil Action (86-1498) you requested; however, given the  
21 length of time (well over 30+ years ago), it's becoming a real challenge and  
22 unfortunately for me, I need to work and time is becoming a critical issue for me."  
23 (Exhibit 7, pp. DFPI 75-76.) The email attached a copy of a May 1986 newspaper article  
24 about a verdict favorable to respondent in a different civil case about the sale of  
25 Heritage Bank stock. Regarding the requests for an amended filing through NMLS,  
26 Respondent stated, "I thought I had checked the appropriate box seeing as no court had  
27  
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<sup>1</sup> 2 In reality, respondent had already answered "Yes" to Question (K)(8) despite Roldan's suggestion to the contrary.

1 ruled against me in any civil action. At your convenience, would you please advise as to  
2 what boxes I should check and I will promptly file an 'amended MLO application' .... "  
3 (Exhibit 7, p. DFPI 76.)

4 11. On September 21, 2020, Complainant's counsel filed a Notice of Intention  
5 to Issue Order denying Mortgage Loan Originator License Application, and a Statement  
6 of Issues requesting denial of Respondent's application. The Statement of Issues  
7 alleges Respondent "has failed to demonstrate such financial responsibility, character,  
8 and general fitness as to command the confidence of the community and to warrant a  
9 determination that he will operate honestly, fairly and efficiently." (Exhibit 1, pp. DFPI 3-  
10 4.) Respondent filed a Notice of Defense on October 8, 2020.

11 12. Complainant presented the relevant documents regarding Respondent's  
12 application and called Meircee Boulahroud, a Department special administrator for  
13 mortgage licensing, to testify about the application process. Boulahroud testified  
14 Respondent has still not amended his application to respond "Yes" to Question  
15 (J)(1)(a), which asks whether any court has enjoined him in connection with any  
16 financial services-related activity. An NMLS Policy Guidebook available online defines  
17 "financial services related" as "Pertaining to securities, commodities, banking,  
18 insurance, consumer lending, money services businesses, consumer debt management  
19 or real estate .... " (Exhibit 8, p. DFPI 209.) Respondent has also still not uploaded a  
20 copy of the complaint underlying the Judgment.

21 13. Respondent testified he was not trying to hide anything from the  
22 Commissioner, as shown by his description of the Judgment in connection with his  
23 "Yes" answer to Question (K)(8). He answered "No" to Question (J)(1)(a) because the  
24 Judgment concerned alleged violations pertaining to the purchase and sale of  
25 securities, which is distinct from financial services in respondent's view. Respondent did  
26 not consult the NMLS Policy Guidebook for the definition of "financial services related"  
27 when completing the application, and he thought he was answering correctly. He also  
28 does not have a copy of the complaint in the case, and he does not know how to get  
one. He testified he made several inquiries to the SEC, but the SEC did not provide a  
copy.

14. Respondent requests an "approved-inactive" license while he applies for jobs as a mortgage loan originator. He plans to identify a sponsor and activate the license once he obtains a position. He testified he needs the license in order to support himself and his wife. He has worked in the banking industry for decades, and two former colleagues (Michael Wilson and Richard Wessman) and an attorney who worked with Respondent (Arthur Coren) testified to his trustworthiness, good character, and professionalism.

The Commissioner makes the following additional factual findings:

15. Exhibit 6 to Respondent's Petition for Reconsideration purports to be a screenshot of a search result from Public Access to Court Electronic Records (PACER), a service of the federal judiciary ("PACER screenshot"). The PACER screenshot indicates that it is from the website <https://ecf.cacd.uscourts.gov/> and states that it is a "California Central District-Query" of case number 86-1498. It states: "Cannot find case 86-1498." The SEC action was heard by the Central District of California and its case number is 86.1498. (Petition for Reconsideration Exhibit 6; Exhibit 6, pp. DFPI 71-73.)

16. Respondent searched his personal documents and contacted the SEC between five and seven times in an attempt to locate the complaint in the SEC action. (Transcript, pp. 109, 117.)

17. Character witnesses testified that Respondent was employed in the banking industry, including in a managerial capacity, and engaged in lending activities after the SEC action. (Transcript, pp. 78, 141-142, 149-150.)

18. Respondent testified that since his employment with Heritage, including before and after the SEC action, he worked in the banking industry either as a consultant or in other positions. (Transcript, pp. 85-87.)

## Legal Conclusions

The Commissioner adopts the following legal standards from the Decision:

1. "Every licensee engaging in the business of making or brokering residential mortgage loans shall require that every mortgage loan originator employed or compensated by that licensee obtains and maintains a mortgage loan originator

1 license from the commissioner . . . , or has first obtained a license endorsement from the  
2 commissioner of Real Estate . . . ." (Fin. Code, §§ 22100, subd. (b), 50002.5, subd. (a).)

3 "An applicant for a mortgage loan originator license shall apply by submitting the  
4 uniform form prescribed for such purpose by the [NMLS]. The commissioner may  
5 require the submission of additional information or supporting documentation to the  
6 Department." (Fin. Code, §§ 22105.1, subd. (a), 50140, subd. (a).) "[T]he applicant shall,  
7 at a minimum, furnish to the [NMLS] information concerning the applicant's identity,  
8 including the following: [¶] (1) Fingerprint images and related information, for purposes  
9 of performing a federal, or both a state and federal, criminal history background check.  
10 [¶] (2) Personal history and experience in a form prescribed by the [NMLS], including  
11 the submission of authorization for the [NMLS] and the commissioner to obtain both of  
12 the following: [¶] (A) An independent credit report obtained from a consumer reporting  
13 agency. [¶] (B) Information related to any administrative, civil, or criminal findings by any  
14 governmental jurisdiction." (Fin. Code, §§ 22105.1, subd. (c), 50140, subd. (e).)

15 2. The Commissioner shall deny an application for a mortgage loan  
16 originator license unless the Commissioner makes, at a minimum, findings that the  
17 applicant: (1) has never had a mortgage loan originator license revoked in any  
18 governmental jurisdiction, unless the revocation was subsequently vacated; (2) has not  
19 been convicted of, or pled guilty or nolo contendere to, a felony during the seven-year  
20 period preceding the date of the application, or at any time if the felony involved an act  
21 of fraud, dishonesty, or a breach of trust, or money laundering, unless the felony was  
22 expunged or pardoned; (3) "has demonstrated such financial responsibility, character,  
23 and general fitness as to command the confidence of the community and to warrant a  
24 determination that the mortgage loan originator will operate honestly, fairly, and  
25 efficiently within the purposes of this division;" (4) has completed a prelicensing  
26 education requirement; (5) has passed a required written test; and (6) "is employed by,  
27 and subject to the supervision of, a finance lender or broker [or a bonded residential  
28 mortgage lender or servicer] that has obtained a license from the commissioner  
pursuant to this division." (Fin. Code, §§ 22109.1, 50141.) The Commissioner's finding  
regarding an applicant's financial responsibility, character, and fitness "relates to any  
matter, personal or professional, that may impact upon an applicant's propensity to

1 operate honestly, fairly, and efficiently when engaging in the role of a mortgage loan  
2 originator." (Cal. Code Regs., tit. 10, §§ 1422.6.2, subd. (a), 1950.122.5.2, subd. (a).)  
3 "Before denying a license, the commissioner shall proceed as prescribed by Chapter 5  
4 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
5 Code and shall have all the powers granted under that chapter." (Fin. Code, §§  
6 22109.1, subd. (b), 50141, subd. (b).)

7 3. Respondent bears the burden of proving that he meets all prerequisites for  
8 the requested license. (*Martin v. Alcoholic Beverage Control Appeals Bd* (1959) 52  
9 Cal.2d 259, 265-266.) This burden of proof requires proof by a preponderance of the  
10 evidence (Evid. Code, § 115), which means "evidence that has more convincing force  
11 than that opposed to it." [Citation.] (*People ex rel. Brown v. Tri-Union Seafoods, LLC*  
12 (2009) 171 Cal.App.4th 1549, 1567.)

13 The Commissioner finds the following additional legal standards:

14 4. "In reaching a decision official notice may be taken, either before or after  
15 submission of the case for decision, of any generally accepted technical or scientific  
16 matter within the agency's special field, and of any fact which may be judicially noticed  
17 by the courts of this State. Parties present at the hearing shall be informed of the  
18 matters to be noticed, and those matters shall be noted in the record, referred to  
19 therein, or appended thereto. Any such party shall be given a reasonable opportunity on  
20 request to refute the officially noticed matters by evidence or by written or oral  
21 presentation of authority, the manner of such refutation to be determined by the  
22 agency." (Gov. Code, § 11515.)

23 5. "Judicial notice may be taken of the following matters to the extent that  
24 they are not embraced within Section 451: . . . (d) Records of (1) any court of this state  
25 or (2) any court of record of the United States or of any state of the United States."  
(Evid. Code, § 452.)

26 *Legal conclusion regarding official notice*  
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1           6.       Both parties present at the hearing were given the opportunity to refute the  
2 PACER screenshot through written presentation of authority in briefing following the  
3 Order of Reconsideration.

4           7.       After considering this briefing, the Commissioner takes official notice of  
5 the PACER screenshot pursuant to Government Code Section 11515 and Evidence  
6 Code 452, subdivision (d)(1). While Complainant argues that the PACER screenshot  
7 cannot be authenticated, the Commissioner finds that under the current circumstances  
8 the argument is without merit, as Complainant has direct access to the PACER system  
9 within its possession and has not disputed that a query of the SEC action case number  
10 within the Central District of California results in anything other than what is reflected on  
11 the face of the PACER screenshot.

12                   *Legal conclusion regarding fitness for licensure*

13                   Respondent's "no" answer to (J)(1)(a)

14           7.       Question (J)(1)(a) asks whether any domestic or foreign court has ever  
15 enjoined Respondent in connection with any financial services-related activity.  
16 Respondent answered "no," when in fact he had been enjoined by a court of the Central  
17 District of California in the SEC action. Respondent testified that he believed he was  
18 answering truthfully based on his understanding of the term "financial services related."  
19 Although he responded incorrectly to question (J)(1)(a), Respondent disclosed the SEC  
20 action in response to question (K)(8) on the application. Therefore, Respondent's failure  
21 to disclose the action under Question (J)(1)(a) but disclosure of the action under  
22 Question (K)(8) on the application does not prevent the Commissioner from finding that  
23 Respondent "has demonstrated such financial responsibility, character, and general  
24 fitness as to command the confidence of the community and to warrant a determination  
25 that the mortgage loan originator will operate honestly, fairly, and efficiently within the  
26 purposes of this division." (Fin. Code, §§ 22109.1, 50141.)

27                   Failure to submit underlying complaint in SEC action

28           8.       The evidence establishes that Respondent submitted a copy of the "Final  
Judgment as to Defendant Herbert E. Slezinger, Jr." in the SEC action, an SEC Digest

1 news item summarizing the case, and a statement of his own recollection of the action.  
2 Respondent's testimony demonstrates that he searched his personal records for the  
3 underlying complaint in the SEC action and called the SEC several times in an attempt  
4 to obtain a copy. Further, the officially noticed PACER screenshot demonstrates that  
5 Respondent has now attempted to obtain the document from the relevant federal court  
6 through its public web portal and the document is not available.

7 9. In light of the documentation submitted by Respondent and his efforts to  
8 obtain the underlying complaint, the lack of evidence regarding whether Respondent  
9 attempted to obtain the underlying complaint from the relevant federal court before the  
10 hearing does not prevent the Commissioner from concluding that Respondent provided  
11 adequate information regarding the SEC action to allow the Commissioner to make a  
12 finding that he "has demonstrated such financial responsibility, character, and general  
13 fitness as to command the confidence of the community and to warrant a determination  
14 that the mortgage loan originator will operate honestly, fairly, and efficiently within the  
15 purposes of this division." (Fin. Code, §§ 22109.1, 50141.)

16 Lack of sponsoring licensee

17 10. In his July 14, 2020, email to Roldan, Respondent requested an 'approved  
18 inactive' license. (Exhibit 5, pp. DFPI 57-58.) Roldan responded "[a]ssuming all license  
19 item requirements have been met and only the sponsor requirement is remaining, a  
20 license will be approved-inactive." (*Ibid.*) Based on this assurance from the Department,  
21 which Respondent reasonably relied upon, the lack of a sponsoring licensee is not a  
22 sufficient ground alone to deny Respondent a license.

23 11. Based upon this record, including Respondent's character witness  
24 testimony, the length of time since the SEC action, Respondent's subsequent  
25 employment directly with or as a consultant for various financial institutions, and the  
26 absence of evidence of other disclosable events since Respondent's SEC action, the  
27 Commissioner finds that Respondent demonstrates such financial responsibility,  
28 character, and general fitness as to command the confidence of the community and to  
warrant a determination that as a mortgage loan originator, Respondent will operate

1 honestly, fairly, and efficiently within the purposes of this division. Respondent has  
2 demonstrated that he meets the requirements for licensure.

3 **Order**

4 The July 16, 2021 Decision of the Commissioner is vacated. Respondent Herbert  
5 Edwin Slezinger Jr.'s application for a mortgage loan originator license with an inactive  
6 status is granted, with the following condition. Within sixty calendar days of the date of  
7 this order, Respondent shall revise his MU4 form through NMLS to reflect an affirmative  
8 response to Disclosure Question J(1)(a), with the "Final Judgement as to Defendant  
9 Herbert E. Slezinger, Jr." in Civil Action No. 86-1498 JSL (MCX) as the reason for the  
10 affirmative response. Respondent need not resubmit previously submitted documents or  
11 narrative explanation of Civil Action No. 86-0165 JSL (MCX).

12 Upon submission of the revised MU4, the Department shall issue the license with  
13 an inactive status. This license shall be activated upon submission of a sponsorship  
14 request from a Department-licensed residential mortgage lender. If Respondent fails to  
15 submit the revised MU4 within 60 calendar days of the effective date of this order, the  
16 application is denied as of that date.

17 This order is effective November 9, 2021 pursuant to Gov. Code, § 11519,  
18 subdivision (a).

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21 Christopher S. Shultz  
22 Acting Commissioner of  
23 Financial Protection and Innovation  
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