

BEFORE THE
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
STATE OF CALIFORNIA

In the Matter of:

COMMISSIONER OF FINANCIAL PROTECTION
AND INNOVATION,

Complainant,

v.

ALEJANDRO ARAUZ,

Respondent.

Agency No. 169793


OAH No. 2022020482

DECISION

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

This Decision shall become effective on November 17, 2022.

IT IS SO ORDERED THIS 18 day of October, 2022.


CLOTHILDE V. HEWLETT
Commissioner of
Financial Protection and Innovation

ERRATA SHEET

(Changes to Proposed Decision – In the Matter of The Commissioner of Financial Protection and Innovation v. Alejandro Arauz – OAH No. 2022020482)

1. On Page 7, Paragraph #20 of the Proposed Decision’s “Factual Findings” section, delete “he could complete” in the second sentence, as shown: “The attraction of REES for Respondent was that ~~he could complete~~ he could complete his education at home, through self-study.”
2. On Pages 14-15, Paragraph #7 of the Proposed Decision’s “Legal Conclusions” section, delete the following:

“(g) Fail to comply with this division or rules or regulations promulgated under this division, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this division. [¶] . . . [¶]”

Replace with:

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

(h) Fail to comply with this division or rules or regulations promulgated under this division, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this division. [¶] . . . [¶]”

**BEFORE THE
DEPARTMENT OF FINANCIAL PROTECTION
AND INNOVATION
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In the Matter of:

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

Complainant,

v.

ALEJANDRO ARAUZ,

Respondent.

Agency Case No. 721428

OAH No. 2022020482

PROPOSED DECISION

Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 5 and 6, 2022.

Allard C. Chu, Senior Counsel, and Blaine Noblett, Senior Counsel, appeared on behalf of Clothilde V. Hewlett (Complainant), the Commissioner of the Department of Financial Protection and Innovation (Department or DFPI).

Adline Tungate, Attorney, appeared on behalf of Alejandro Arauz (Respondent).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 6, 2022.

SUMMARY

Complainant seeks to revoke Respondent's mortgage loan originator (MLO) license based on allegations Respondent violated the Nationwide Mortgage Licensing System and Registry (NMLS) student Rules of Conduct (ROC) by using the services of Danny Yen, doing business as Real Estate Educational Services (REES), to complete his NMLS-approved online pre-licensure (PE) and/or continuing education (CE) courses. Complainant alleges Respondent's conduct constitutes a violation of the licensing requirement of DFPI under California Financing Law (CFL) (Fin. Code, § 22000 et seq.) Specifically, Complainant alleges Respondent used and compensated REES to complete one course during 2020 on his behalf.

Respondent admits to using REES to complete PE and CE courses but denies participating in the fraud perpetrated by REES. Respondent maintains he did not knowingly participate in an MLO education cheating scheme by using REES and believed that he properly completed the courses, including the one course during 2020. He maintains that any error on his part was negligent and argues that revocation is an unduly severe penalty under the circumstances. Respondent's claims are not credited.

The weight of the evidence presented at hearing established through clear and convincing evidence Respondent engaged in the cheating scheme. Accordingly, revocation of Respondent's MLO license is warranted and necessary to protect the public.

Factual Findings

Jurisdictional Matters

1. On December 20, 2021, Allard C. Chu, acting solely in his official capacity as Senior Counsel for the Department, executed the Accusation on behalf of Complainant.
2. On October 15, 2012, Respondent received his first MLO License from the Commissioner. The license expired on January 1, 2014. On May 6, 2014, Respondent's license was renewed and expired again on January 1, 2020. The license lapsed for a year. Subsequently, Respondent renewed the license on January 12, 2021. The license was active through March 15, 2022. Since March 16, 2022, Respondent's license has been in approved inactive status with the DFPI. Respondent has no history of license discipline.

Background

NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY (NMLS)

CONTINUING EDUCATION

3. The NMLS is owned and operated by the State Regulatory Registry LLC (SRR). SRR administers pre-licensure (PE) and continuing education (CE) and Uniform

State Test protocols. State licensed MLOs, like Respondent, are required to complete PE prior to initial licensure and annual CE thereafter pursuant to Title V of Public Law 110-289, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the SAFE Act). (Fin. Code, §§ 22109.2 and 22109.5.)

4. To satisfy PE requirements under the SAFE Act, state-licensed MLOs must complete 20 hours of NMLS-approved education. (Fin. Code, § 22109.2.) CE requirements for state-licensed MLOs under the SAFE Act are eight hours. (Fin. Code, § 22109.5.)

REAL ESTATE EDUCATIONAL SERVICES (REES) – NMLS COURSE PROVIDER

5. Danny Yen is the sole proprietor owner of REES and has conducted the business under the fictitious business name of REES since February 2008. REES's business address at all relevant times was 3643 Adams Street, Carlsbad, California 92008.

6. From 2017 through 2020, REES was an NMLS-approved course provider, NMLS course provider number 1405046. REES was approved by NMLS to offer one in-person eight-hour "DBO-SAFE At Comprehensive: Mortgage Continuing Education" course from an office suite located at 15751 Brookhurst Street, Suite 230, Westminster, California 92683 (the Brookhurst Address). REES was never approved to offer online and/or correspondence course PE or CE to MLOs by the NMLS.

7. At all relevant times to this matter, REES, by and through Danny Yen, maintained his Internet Service Provider and IP address at 76.88.84.139 (the IP Address), which is associated with REES's business address.

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REES INVESTIGATION

8. In late 2020, SRR initiated an investigation of a possible MLO education cheating scheme coordinated and implemented through REES and its owners and operators, including Danny Yen.

9. The SRR found at least 113 education students associated with taking online PE and/or CE courses from REES's IP Address in Carlsbad, California (the SRR report). Respondent was identified in the SRR report as one of the 113 students that had completed PE and/or CE from the IP Address in Carlsbad, California and who received NMLS course credit. Respondent does not reside or work at the 3643 Adams Street, Carlsbad, California, physical address associated with the IP Address as belonging to REES. It is undisputed Respondent did not complete any PE and/or CE course in person with REES.

DFPI Allegations against Respondent

10. The Commissioner brought the instant Accusation seeking to revoke Respondent's MLO license based on allegations Respondent violated the NMLS ROC by using the services of REES to complete Respondent's NMLS-approved online PE and/or CE courses, which in turn constitutes a violation of the licensing requirements of the DFPI under the CFL and federal law. (Fin. Code, §§ 22109.1, 22172, and 22755.)

11. Specifically, the DFPI alleges Respondent knowingly and intentionally used and compensated REES to complete one class during 2020 (Disputed Course) on his behalf and that the course for which Respondent received course credit was completed by REES through an IP address associated with REES.

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Hearing

12. Mr. Yen testified at hearing. Based on REES's continuing education cheating scheme, Mr. Yen obtained a settlement agreement which reduced the monetary penalty he was to pay DFPI for his role in the cheating scheme by agreeing to participate in actions and investigations against other MLOs. At hearing, Mr. Yen admitted REES did not provide live classes to any MLO student, including Respondent. He further admitted that he completed online coursework on behalf of 113 MLOs, including Respondent, during the 2019 and 2020 and that those MLOs received course credit from NMLS-approved course providers for classes that the MLOs, including Respondent, did not complete.

13. Mr. Yen completed the courses using the IP Address. He created email addresses on behalf of MLO students, including Respondent, to take the courses. He used third party continuing education providers to enroll MLO students in other providers' coursework. Mr. Yen testified that the price he charged to complete the courses on the MLO students behalf was higher than the usual market rate for the continuing education courses.

14. According to Mr. Yen, Mr. Jayson Lee was the intermediary who provided Mr. Yen with the MLOs for whom he completed continuing education courses.

15. Mr. Yen testified that he never met and/or communicated with Respondent at any time.

16. REES was licensed by the DFPI at the time the Disputed Courses were completed.

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17. The evidence established Mr. Yen completed the Disputed Courses on Respondent's behalf.

Respondent's Evidence in Mitigation and Rehabilitation

18. Respondent testified at hearing. Respondent admits that REES was not licensed to provide the specific Disputed Course.

19. However, Respondent asserts he completed the Disputed Course and two other courses with REES with the good faith belief he was completing his education requirements, as required by NMLS and the DFPI. According to Respondent, he mistakenly relied on the representations of REES and its appearance of legitimacy to complete the Disputed Course and other courses, as more fully detailed below.

20. Respondent testified he became aware of REES in 2019 in the same way he discovered other educational providers in the past; through referral by industry colleagues. The attraction of REES for Respondent was that he could complete he could complete his education at home, through self-study. Respondent was not aware he could not complete NMLS and DFPI courses through self-study based on his experience completing CE through self-study for the Department of Real Estate (DRE).

21. Respondent used REES for the first time in September 2019 to complete courses to obtain his license with the DRE. All communications regarding REES educational courses occurred through Mr. Lee either by telephone or from an email address with a signature line identifying Mr. Lee as an Account Executive at "Realty College." Respondent testified that to register for the courses at that time, he received checklists, credit card payment authorization forms, application forms, statutory admonitions, and disclaimers, a Livescan application, an enrollment agreement from a

company called "The Real Estate Institute," and a blank answer sheet to complete once he reviewed the materials sent to him.

22. Respondent testified he received course materials from REES, including blank answer sheets for the end of review final exam. He reviewed the correspondence course materials, completed the exam, filled out the answer sheets, and returned the materials to REES. After the submission, Respondent testified he received a completion certificate from "Real Estate Institute USA" signed by Pat Yen. Respondent never communicated with Pat Yen. All communications were with Mr. Lee.

23. Based on Respondent's positive experience with REES in September, Respondent used REES again in February 2020 to complete a seven-hour CE class called SAFE Comprehensive: Compliance in Action 2021 and a 1-hour CE class called CA-DFPI SAFE: California State Law 2021. Respondent testified he completed these courses through home self-study, as instructed by REES, for the purpose of completing late CE credit for the 2019 year. Respondent asserted he again completed enrollment forms which identified the courses as via correspondence.

The enrollment form in question does not corroborate Respondent's claims. In fact, the forms specifically state, that the class to be completed was an "8 hour LIVE in-class Continued Education course." (Exhibit E.) According to the form, Respondent paid \$260 dollars for the eight-hour class.

24. Respondent testified he completed a number of forms to enroll in the class and was given course materials and blank exam sheets which he completed. He maintains he completed the test, filled out his answers, and again returned the materials to REES. The materials Respondent purportedly completed and returned to REES which would corroborate his testimony were not submitted into evidence.

Respondent testified he no longer had the materials because he had disposed of them after he completed the courses and before he knew there was an issue with REES's continuing education services.

25. Respondent acknowledged that he was sent certificates of completion which did not have REES written on them. Rather, the seven-hour PE course indicated Respondent completed an "online" course and has "Ameritrain" written on the certificate. The one-hour PE course also has "Ameritrain" written on the certificate and did not specify whether the course was in person, online, or correspondence. According to Respondent, he did not review the certificates in any detail and did not believe that there were any issues with the coursework he completed by correspondence.

26. Respondent testified he was not aware that the two courses were completed online, through the educational provider Ameritrain, purportedly by Respondent using the email chunkmale62735@gmail.com, until after he saw Ameritrain Mortgage Institutions subpoenaed records. Respondent testified that the referenced email does not belong to Respondent; he has never used this email or received mail from this email address. According to Respondent, the email was used without his knowledge or consent to complete the courses on his behalf. The records provided to DFPI evidence payment for the courses show it was Mr. Lee, rather than Respondent, who paid Ameritrain for the two courses.

27. In late 2020, Respondent re-applied for his MLO license. According to Respondent, he again used REES's services because of his multiple past positive experiences using its services. Respondent testified he registered and completed a two-hour, home self-study course called CA-DFPI SAFE: California Mortgage Laws and Regulations for PE credit, in order to obtain his MLO license (Disputed Course). He

maintains he again completed the same process for enrolling, receiving course materials, studying and returning completed exam answer sheets.

Again, the enrollment form in question does not corroborate Respondent's claims. In fact, the form specifically states, that the class to be completed was a "2 hour LIVE in-class Continued Education course." Respondent asserts he never received a certificate of completion for this course, but his NMLS account was updated showing the course as completed.

28. Respondent testified he was unaware REES was not authorized to conduct at-home correspondence courses. He maintains that the first time he became aware of REES's fraudulent scheme was when he was contacted by a DFPI investigator in late 2021. Respondent asserts he never authorized REES to report he attended the Disputed Course and the other two courses in-person or online.

29. Respondent only communicated with Mr. Lee. He asserts he never spoke to or met any member of the Yen family, including Mr. Yen. Respondent received the two certificates of completion for the late 2019 courses from Mr. Lee. According to Respondent, he did not provide his NMLS login credentials to Mr. Lee or anyone at REES. Rather, REES, like other educational providers he had used in the past, used his publicly accessible NMLS number to report his completion of the Disputed Courses.

30. Respondent testified that he was not a participant in the cheating scheme. He acknowledges that enrollment forms for the course in question indicated that the class was offered live in-person. However, he explains he was negligent in reviewing the course enrollment materials and did not realize that the enrollment agreement did not state that the courses were correspondence courses, as he was led to believe by Mr. Lee. Respondent asserts his admitted negligence does not warrant

the outright revocation of his MLO license. Respondent maintains revocation is too severe a penalty for his negligence based on his ignorance of the cheating scheme and justified reliance on REES's apparent legitimacy as an NMLS educational provider. Respondent maintains he is a competent and responsible licensee dedicated to providing quality MLO services to the public. He emphasizes his MLO license has never been disciplined. Respondent testified that as soon he was made aware of issues with his educational credits, he completed makeup hours for the Disputed Courses. (Exhibit O.)

Credibility Findings

31. Respondent's claims of negligent ignorance are not credited and are inconsistent with the attention to detail required of an MLO. Respondent received enrollment agreements from REES which indicated he was enrolling in live classes. He was aware he did not complete the classes live and in-class with REES. He was also aware, based on the certificate of completion he received from REES's representative Mr. Lee, he was receiving a certificate for a course that was completed online which he did not complete online.

32. Respondent as the licensee is ultimately responsible for the information reported to the NMLS regarding educational courses. In fact, Respondent, as the licensee must attest each time he renews his MLO license that he has completed the continuing education requirements mandated by the DFPI. (Exhibit 35.) Respondent's attempts to characterize himself as simply negligent in submitting false information to the DFPI is unconvincing based on the evidence establishing he knowingly enrolled in and received credit for courses he did not complete through self-study.

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33. Complainant established its allegations against Respondent that he paid REES to complete the PE and CE courses on his behalf and knowingly participated in the cheating scheme. It was established Respondent enrolled in courses that were supposed to be offered live and in person and that he knew he did not complete those courses live and in person.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. The burden of proof in this matter is on Complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.) Complainant's primary contention in this matter, that Respondent used another to complete his PE and/or CE educational course requirements, was established through clear and convincing evidence. The evidence established cause to discipline Respondent's MLO license. Respondent knowingly, willfully, and negligently completed courses by correspondence which he knew, based on enrollment agreements, were to be completed through live in-class instruction and for which he received completion certificates indicating that the courses were completed online, rather than by correspondence. Accordingly, he fraudulently misrepresented to the DFPI he was completing his educational requirements.

Violation of NMLS ROC 4 – Established

2. NMLS ROC 4 provides, "I will not divulge my login ID or password or other login credential(s) to another individual for any online course."

3. Based on Factual Findings 1 through 33, Complainant established through clear and convincing evidence the allegation that Respondent gave his NMLS credential to REES to complete educational courses. It is undisputed PE/CE educational providers report completion of educational courses. REES used Respondent's publicly accessible NMLS number to report completion of the Disputed Courses using a fraudulent email created by REES. Respondent was aware REES was submitting false information using his NMLS information to the DFPI. He provided no credible evidence to corroborate his self-interested testimony he received and submitted coursework for the corresponding courses he purportedly completed through self-study.

Violation of NMLS ROC 5 - Established

4. NMLS ROC 5 provides, "I will not seek or attempt to seek outside assistance to complete the course." Based on Factual Findings 1 through 33, Complainant established through clear and convincing evidence the allegation that Respondent engaged in a cheating scheme and retained REES to complete PE and/or CE educational courses on his behalf. It was established that Respondent used an NMLS educational provider, REES, to satisfy his PE and CE requirements, as set forth in Legal Conclusion 3.

Violation of NMLS ROC 9 – Established

5. NMLS ROC 9 provides, "I will not engage in any conduct that is dishonest, fraudulent, or would adversely impact the integrity of the course(s) I am completing and the conditions for which I am seeking licensure or renewal of licensure." Based on Factual Findings 1 through 33, Complainant established through clear and convincing evidence the allegation that Respondent engaged in a cheating

scheme and retained REES to complete PE and/or CE educational courses on his behalf.

6. It was established through clear and convincing evidence Respondent engaged in conduct which adversely impacted the integrity of the courses he completed by willfully and knowingly enrolling in courses which were designated as live in-class courses in, as set forth in Factual Findings 18 through 33. Respondent enrolled in courses he knew were designated as live and in-person and received completion certificates for at least one of the Disputed Courses showing the course was on-line. Respondent was aware that he was engaging in conduct that adversely impacted the integrity of the courses he was completing because he was not completing the courses either live or on-line, as he misrepresented to the DFPI.

Violation of Financial Code section 22755, subdivisions (b), (g), (h), and (j) – Established in Part

7. Financial Code section 22755, subdivision (b), (g), (h) and (j), provide, in relevant part:

It is a violation of this division for a mortgage loan originator to do any of the following: [¶] . . . [¶]

(b) Engage in any unfair or deceptive practice toward any person. [¶] . . . [¶]

(g) Fail to comply with this division or rules or regulations promulgated under this division, or fail to comply with any other state or federal law, including the rules and

regulations thereunder, applicable to any business authorized or conducted under this division. [¶] . . . [¶]

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

8. Complainant established through clear and convincing evidence the allegation that Respondent used another to complete his required education in violation of Financial Code section 22755, subdivisions (b), (g), (h), and (j), based on Factual Findings 1 through 33. Respondent enrolled in courses he knew were to be provided through live in-person instruction. He did not complete the courses in accordance with the enrollment agreements. He then falsely indicated to the NMLS those courses were completed in person.

Failure to Demonstrate Financial Responsibility, Character, and General Fitness

9. The Commissioner may deny an MLO license if the licensee fails to meet the minimum criteria for licensure, which includes a requirement 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 [MLO] will operate honestly, fairly, and efficiently within the purposes of this division." (Fin. Code, § 22109.1, subd. (a)(3).)

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10. It was established Respondent violated ROC 4, 5, and 9 by willfully and knowingly enrolling in courses which were designated as live in-class courses in enrollment forms and misrepresenting he completed the courses in person, as set forth in Factual Findings 18 through 33. As a result, it was established Respondent's misrepresentation amounts to conduct that fails to meet the minimum criteria for character and general fitness for licensure under the CFL and corresponding federal law, thereby subjecting his MLO to discipline.

11. Financial Code section 22172 provides, in relevant part:

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

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

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

12. Cause was established to discipline Respondent's MLO license pursuant to Financial Code sections 22172, subdivisions (a)(1) and (a)(2), because Complainant presented clear and convincing evidence to warrant a finding Respondent participated in an education fraud scheme by using REES to complete his online PE and/or CE coursework in violation of the ROC and Financial Code section 22755, subdivisions (b), (g), (h), and (j), as set forth in Legal Conclusions 1 through 11.

Appropriate Discipline

13. All matters in mitigation and rehabilitation have been considered. Respondent provided false information regarding his completion of mandated educational requirements to the DFPI. His attempts to characterize his misrepresentations as merely neglectful are not credited. As a licensee he bears the ultimate obligation to provide accurate information to the DFPI regarding continuing education requirements. Respondent's actions and failure to take meaningful responsibility for his dishonest actions demonstrate his continued licensure poses a threat to the public.

ORDER

The mortgage loan originator license issued to respondent Alejandro Arauz is revoked.

DATE: **08/02/2022**



IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings