

BEFORE THE
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
STATE OF CALIFORNIA

In the Matter of:

COMMISSIONER OF FINANCIAL PROTECTION
AND INNOVATION,

Complainant,

v.

ASHKAN DERAKHSHAN,

Respondent,

Agency No. 169793

OAH No. 2022050793


DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Financial Protection and Innovation (formerly the Department of Business Oversight) as its Decision in the above-entitled matter.

This Decision shall become effective on January 6, 2023.

IT IS SO ORDERED THIS 14 day of December, 2022.




CLOTHILDE V. HEWLETT
Commissioner of
Financial Protection and Innovation

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

In the Matter of the First Amended Statement of Issues

Against:

ASHKAN DERAKHSHAN,

Respondent.

NMLS No. 2174666

OAH No. 2022050793

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 20, 2022. Clothilde V. Hewlett (Complainant), Commissioner (Commissioner) of Financial Protection and Innovation, was represented by Taylor Steinbacher, Senior Counsel for the Department of Financial Protection and Innovation (Department). There was no appearance by or on behalf of Ashkan Derakhshan (Respondent).

The ALJ received testimony and documentary evidence. The record closed and the matter was submitted for decision on September 20, 2022.

SUMMARY

The Commissioner seeks to deny Respondent's application for a mortgage loan originator license alleging Respondent has not demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that he will operate honestly, fairly, and efficiently as a licensee. The Commissioner established grounds for denial. Respondent submitted no evidence in mitigation or rehabilitation.

FACTUAL FINDINGS

Jurisdictional Matters

1. The Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of making or brokering residential mortgage loans, including mortgage loan originators, under the California Financing Law (CFL) (Fin. Code, § 22000 et seq.), and the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.). The Commissioner is authorized to administer the CFL, CRMLA, and the rules and regulations promulgated in Title 10 of the California Code of Regulations.

2. In July 2021, Respondent applied to the Commissioner for a license as a mortgage loan originator (MLO).

3. The Commissioner denied Respondent's MLO license application. On April 8, 2022, Complainant filed the Statement of Issues. On July 28, 2022, Complainant filed the First Amended Statement of Issues (FASOI).

4. Respondent submitted a Notice of Defense requesting a hearing to contest the denial of his MLO license application. Respondent provided his email address in the Notice of Defense.

5. On June 3, 2022, a Notice of Hearing, dated May 31, 2022, setting forth the date and time of the telephonic/videoconference hearing, was personally served on Respondent at his address of record with the Department. Previously, on May 25, 2022, a Notice of Assigned Hearing Date(s) was served on both parties by OAH, setting forth the hearing date and time and providing instructions for participating in the telephonic/video conference. The Notice of Assigned Hearing Date(s) was served on Respondent at his address of record and at the email address he listed in his Notice of Defense.

6. Service of the Notice of Hearing conformed to the requirements of Government Code sections 11505 and 11509.

7. Respondent also had actual notice of the hearing dates which were discussed by the parties in motion hearings on September 9, 2022. The hearing dates were also confirmed in Presiding Administrative Law Judge Matthew Goldsby's September 15, 2022 Order Denying Motion to Change Venue or Jurisdiction.

8. Respondent did not appear at the September 20, 2022 hearing. At Complainant's request, the matter proceeded as a default, pursuant to Government Code section 11520.

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Respondent's Request to Withdraw His Application

9. On August 2, 2022, (after this hearing was scheduled and Complainant had filed the FASOI on July 28, 2022), Respondent requested to withdraw his MLO application.

10. Upon such a request, an application is not automatically withdrawn. After administrative action is initiated (as in this case with the denial and Statement of Issues), the Department does not allow an applicant to unilaterally withdraw a denied application prior to completion of administrative proceedings. This would allow applicants to circumvent any administrative action by the Department by simply withdrawing their applications.

11. Respondent did not file any written withdrawal of his Notice of Defense. Without such a submission, the September 20, 2022 hearing remained on calendar.

MLO License Application

12. To become licensed by the Commissioner as an MLO, an individual must submit a uniform application form (Form MU4) through the Nationwide Mortgage Licensing System and Registry (NMLS). The NMLS contains a detailed set of instructions for filing license applications, including answering the Disclosure Questions, and a checklist of items to be completed and uploaded by the applicant, who is fully responsible for meeting all the requirements of the license. The Disclosure Questions in the Form MU4 must be answered truthfully and correctly. Further clarification in the Disclosure Explanations section is required for any "Yes" responses and certain "No" responses. When material changes occur, all MLO applicants and licensees are required to promptly update their responses by submitting an amended Form MU4.

13. On July 19, 2021, Respondent submitted an initial MLO license application to the Department by filing a Form MU4 through the NMLS.

14. In his MLO application, Respondent disclosed a 2018 disciplinary action by the California Department of Real Estate (DRE) revoking his real estate licenses.

15. As required in his MLO application, Respondent provided an explanation for his DRE discipline. He entitled his explanation, "Outrageous Accusations." (Exhibit 21, p. A182.) Respondent asserted the DRE proceedings against him arose from a "false complaint," and a DRE audit leading to his being "forced into a kangaroo court." (Exhibit 21, p. A182.) Respondent further explained:

[I] could not afford to hire a lawyer. This gave ample ammunition for [DRE] lawyer to commit every unethical/fraudulent act to falsely and outrageously accuse me. In the court I clearly declared to the court this case was based on a false complaint that was not investigated by [DRE] and [DRE] failure to contact me to give me a chance to defend myself. If [DRE] properly investigated the false complaint there would not be any court case. In the court I clearly declared to the court that my real estate activity were [*sic*] only in the leasing homes/apartments. [DRE] made false claims about me running a property management company and most documents requested by [DRE] corresponded to a property management company. Doing only leasing would require much less accounting than a property management company but for some strange reason [DRE] auditor did not understand this simple

fact and made false accusations of me refusing to submit documents that didn't even correspond to my business. I clearly declared to the court few bank mistakes regarding funds going to the wrong account were conciliated within 2-3 business days but according to [DRE] regulations I had 30 days to remedy so there were no violations. I clearly declared to the court [DRE] had no proof even 1 penny of my clients [sic] money were [sic] stolen or misused. The kangaroo court sided with [DRE's] long list of many false claims that makes absolutely no sense for a small company doing simple leasing activity in a very small capacity. I appealed court's decision in 2018 and so far I have not heard from [DRE]. I am a financially responsible and respectful person. I have never stole[n], misplaced or misused any person's money and [DRE] false accusations are just abuse of power.

(Exhibit 21, p. A123.)

16. On September 22, 2021, Respondent submitted an updated Form MU4 in the NMLS, and he uploaded the 2018 DRE decision. He did not amend his prior explanation.

Respondent's DRE Licenses and Revocation

17. Respondent was originally licensed by the Bureau of Real Estate (now the DRE) as a real estate salesperson in October 2007. He obtained his broker's license on August 27, 2012.

18. On August 7, 2017, the DRE filed an Accusation against Respondent, seeking to revoke his DRE-issued licenses due to various violations of the Real Estate Law.

19. Respondent requested an administrative hearing to contest the grounds for revocation set forth in the Accusation. The hearing on the DRE Accusation was held before OAH on January 3 and 4, 2018, and Respondent participated in that hearing.

20. On February 2, 2018, OAH issued a Proposed Decision finding five grounds to discipline Respondent's real estate licenses, including: (1) failure to maintain accurate trust fund records; (2) failure to designate an account as a trust account; (3) commingling his own money with the property of others received and held by him; (4) willful failure to maintain a definite place of business; and (5) willful failure to maintain and produce records.

21. In determining the appropriate level of discipline, the Proposed Decision noted, "Respondent's violations raise substantial concerns about his activities as a broker, and his lack of rehabilitation evidence magnifies those concerns." (Exhibit 23, p. A205.) Specifically, Respondent's lack of rehabilitation included: "He denies personal wrongdoing, expressed no remorse, and demonstrated no change of attitude consistent with rehabilitation. Instead, he continues to assert that the audit was fraudulent and poorly performed, and that others are to blame for any violations." (*Id.* at pp. A205-A206.) The Proposed Decision concluded:

[R]espondent is a poor candidate for a restricted license[.]
His unchanged, obstinate attitude would likely impede
compliance with the terms of restriction and the [DRE's]
oversight of his compliance with those terms, presenting a

risk to the public and hindering his rehabilitation. Given the foregoing, the public cannot be protected by any level of discipline short of revocation.

(Exhibit 23, p. A206.)

22. The Proposed Decision included an order revoking Respondent's licenses and licensing rights under the real estate law and ordering him to pay the DRE \$8,920.79 in investigation and prosecution costs within 30 days of the effective date of the Decision.

23. On February 22, 2018, the DRE adopted the Proposed Decision, with its Decision becoming effective on March 19, 2018. On March 19, 2018, Respondent petitioned the DRE for reconsideration of its Decision. After staying its Decision until March 29, 2018, the DRE considered Respondent's petition and found no good cause to reconsider its Decision. The DRE denied Respondent's petition on March 23, 2018, and its Decision became final effective March 29, 2018.

24. As of July 27, 2022, Respondent had not paid the \$8,920.79 ordered in the DRE Decision.

Respondent's Evidence

25. Respondent provided no evidence in mitigation or rehabilitation.

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LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the initial burden of producing evidence of the grounds for which Respondent's application was denied by filing a statement of issues. (Gov. Code, § 11504 ["A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues"].) "The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought." (*Ibid.*)

2. Once the initial threshold burden is met by Complainant, Respondent bears the burden of proving he meets all the prerequisites necessary for the license he requests. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221.) That burden requires proof by a preponderance of the evidence (Evid. Code, § 115), which means evidence that has more convincing force than that opposed to it (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567).

3. Financial Code section 22109.1 (part of the CFL) provides 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:

[1] . . . [1]

(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. Financial Code section 22172, subdivision (a)(2), authorizes the Commissioner to "[d]eny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 22109.1 . . . or withholds information or makes a material misstatement in an application for a license or license renewal."

5. Financial Code section 50141 (part of the CRMLA) provides 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.

6. Financial Code section 50513, subdivision (b)(2), authorizes the Commissioner to “[d]eny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 50141 . . . or withholds information or makes a material misstatement in an application for a license or license renewal.”

7. California Code of Regulations, title 10, section 1422.6.2, provides in pertinent part:

(a) The Commissioner's finding required by section 22109.1, subdivision (c) of the [CFL] 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.

[¶] . . . [¶]

(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.

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8. California Code of Regulations, title 10, section 1950.122.5.2, provides in pertinent part:

(a) The Commissioner's finding required by subdivision (c) of Section 50141 of the [CRMLA] 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.

[¶] . . . [¶]

(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.

9. Pursuant to the CFL and the CRMLA, the Commissioner may deny an MLO license if, at any time, the applicant fails to demonstrate such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, and efficiently. (Fin. Code §§ 22109.1, 22172, subd. (a)(2), 50141, and 50513, subd. (b)(2).) Respondent's violations leading to his DRE license revocation include his mishandling of trust funds and demonstrate a lack of financial responsibility. Additionally, Respondent's character is questionable given his lack of remorse during

the DRE hearing and the resulting finding that he could not continue to hold a real estate license without presenting a danger to the public. Respondent has had no change of attitude since the DRE proceedings, as evidenced by his MU4 characterization of those proceedings as "a kangaroo court" in which the DRE attorney "committ[ed] every unethical/fraudulent act to falsely and outrageously accuse [him]." (Factual Finding 15.) Respondent's current lack of insight and rehabilitation reflects poorly on Respondent's character. The totality of the evidence indicates Respondent lacks the necessary financial responsibility, character, and fitness to operate honestly, fairly, and efficiently. As such cause exists to deny Respondent's MLO license application pursuant to Financial Code sections 22109.1, 22172, subd. (a)(2), 50141, and 50513, subd. (b)(2).

10. Pursuant to CFL and CRMLA regulations, an applicant may be precluded from obtaining an MLO license where the applicant's history includes mishandling of trust funds. Respondent's DRE violations included the mishandling of trust funds. As such cause exists to deny Respondent's MLO license application pursuant to California Code of Regulations, title 10, sections 1422.6.2 and 1950.122.5.2.

11. Given the foregoing, Respondent has failed to meet his burden of proving he meets the qualifications for the license he seeks. Consequently, denial of Respondent's MLO license application is warranted.

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ORDER

Respondent Ashkan Derakhshan's application for a mortgage loan originator license is hereby denied.

DATE: 09/30/2022



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings