

BEFORE THE
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
STATE OF CALIFORNIA

In the Matter of:

COMMISSIONER OF FINANCIAL PROTECTION
AND INNOVATION,

Complainant,

v.

ASSURANCE CAPITAL, INC., dba TRUST
CAPITAL, USA, aka ZIPPFUND.COM,

Respondent.

Agency Case No. 1584944

OAH No. 2023020273

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Financial Protection and Innovation, with the following technical or other minor changes, as its Decision in the above-entitled matter.

- a. Factual Findings, #12, line 1, p.5: amend 2022 to 2011
- b. Factual Findings, #30, line 3, p. 9: add "from" before OAH
- c. Factual Findings, #31, line 1, p. 9: add "on" before "behalf"
- d. Legal Conclusions, #14, line 1, p. 23: add "on" before "respondent's"
- e. Legal Conclusions, #15, line 1, p. 24: add "on" before "respondent's"
- f. Legal Conclusions, #16, line 1, p. 24: add "on" before "respondent's"
- g. Legal Conclusions, #17, line 1, p. 24: add "on" before "respondent's"
- h. Legal Conclusions, #18, line 1, p. 24: add "on" before "respondent's"
- i. Legal Conclusions, #19, line 1, p. 25: add "on" before "respondent's"

This Decision shall become effective on December 8, 2023.

IT IS SO ORDERED THIS 9th day of November, 2023.



AVY MALLIK
General Counsel
Department of Financial Protection and Innovation

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

In the Matter of the Accusation Against:

**ASSURANCE CAPITAL, INC., d.b.a. TRUST CAPITAL USA, a.k.a.
ZIPPFUND.COM, Respondent**

CFL No. 60DBO-117469

OAH No. 2023020273

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 17, 2023.

Ryan Cassidy, Counsel, represented complainant, Clothilde V. Hewlett, the Commissioner of the Department of Financial Protection and Innovation (department), State of California.

No appearance was made by or on behalf of respondent Assurance Capital, Inc., d.b.a. Trust Capital USA, a.k.a. ZippFund.com.¹

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 17, 2023.

FACTUAL FINDINGS

Jurisdiction and Background Information

1. The department has jurisdiction over the licensing and regulation of persons and entities engaged in the business of finance lending or brokering under the California Financing Law (CFL), California Finance Code section 22000 et. seq.

2. In 2018, Paul Kendall applied for a license with the department as a finance lender and broker under the name Assurance Partners, L.L.C. (hereinafter "the 2018 application.") On October 3, 2018, the department denied the application in part because Mr. Kendall failed to disclose his June 22, 2009, conviction for violation of

¹ Service of process of the notice of hearing in this matter was properly made to the attorney of record for respondent, who later withdrew from representation of respondent prior to the hearing. Additionally, a Notice to Appear was properly served on respondent's previous counsel, as well as on Paul Kendall, the sole owner and officer of Assurance Capital, Inc., at the address listed on the Notice of Defense in this matter. After determination that notice of the hearing was properly served, but no appearance was made on behalf of respondent, this matter proceeded as a prove up hearing.

Penal Code section 148.5, subdivision (a), filing a false police report of a criminal offense, a misdemeanor, on the application as required, and in part because of respondent's underlying conduct involved in filing the false police report that resulted in his conviction. During the 2018 application process, Mr. Kendall wrote a letter to the department dated February 22, 2018, that provides as follows:

Nine years ago. [sic] My friend and I were driving home from the bar. My friend was pulled over by the police. My friend told me her drivers license was suspended and asked me to jump in the drivers [sic] seat. The police ended up arresting me for a DUI. The courts saw proof that the switch was made and dropped the DUI charge down to a misdemeanor of providing false information to the police officer. In hindsight it was a dumb drunk decision and I'd take it back if I could. Please forgive this offense and continue with approval process of the lenders license application.

I strongly believe this offense shouldn't discount my integrity in the equipment financing field. I've been doing equipment financing for 15 years and been in business for 4 years with no problems or complaints. We have an excellent BBB rating and act with the upmost integrity to live up to our name Trust Capital, LLC.

3. On July 14, 2020, respondent Assurance Capital, Inc., filed its application (hereinafter "the 2020 application") with the department for a finance lender and broker license with Mr. Kendall, as C.E.O. and Director of the applicant, signing the

declaration section of the application, as well as the attached questionnaire, and declaring under penalty of perjury that the statements in the application and attached questionnaire were true and correct. On the application questionnaire, Mr. Kendall answered "No" to the question of whether he had ever been convicted of a misdemeanor or felony, and "no" to the question of whether he has ever been refused a license.

4. On April 13, 2021, the department issued to respondent Assurance Capital, Inc., a finance lender and broker license of CFL license number 60DBO-117469.

5. All CFL licensees were required to transition to the Nationwide Multistate Licensing System and Registry (NMLS)² by December 31, 2021. Accordingly, respondent Assurance Capital, Inc., was required to submit multiple forms through NMLS, including the Uniform Mortgage Lender/Broker Application ("form MU1") and the corresponding Individual Filing form ("form MU2"), for Mr. Kendall as the control person and sole officer of respondent Assurance Capital, Inc. Mr. Kendall submitted both the form MU1 and form MU2 under penalty of perjury that the answers he gave were true and correct.

² The State Regulatory Registry (SRR), LLC, owns and operates NMLS. NMLS is "a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators." (Fin. Code, § 22012, subdivision (d).)

In response to form MU2 question asking if he had ever been convicted of committing a misdemeanor crime involving false statements or omissions, Mr. Kendall answered, "No."

In response to form MU2 question asking if any state regulatory agency has ever found you to have made a false statement or omission, Mr. Kendall answered, "No."

In response to form MU2 question asking if any state regulatory agency has ever denied your application for licensure, Mr. Kendall answered, "No."

In response to form MU2 question asking if any state regulatory agency has ever suspended your registration, Mr. Kendall answered, "No."

In response to form MU2 question asking "[b]ased upon activities that occurred while you exercised control over an organization, has any State ever" suspended the organization, Mr. Kendall answered, "No."

6. On November 1, 2022, complainant filed the accusation seeking revocation of respondent Assurance Capital, Inc.'s, finance lender and broker license and to "levy administrative fines against Assurance Capital, Inc., according to proof," based upon allegations that: (1) Mr. Kendall, on behalf of respondent, violated the CFL by failing to disclose his 2009 conviction for filing a false police report on the 2020 application to the department, as well as on his answers to questions on the NMLS forms; (2) Mr. Kendall, on behalf of respondent, violated the CFL by failing to disclose on the 2020 application that the department refused to issue a license to Mr. Kendall and Assurance Partners, L.L.C., in 2018 when he had applied for the same license at issue in the 2020 application, and he failed to disclose that fact on his NMLS questionnaire; (3) Mr. Kendall, on behalf of respondent violated the CFL by providing

false information about the fact that his registration for ZippFunding, Inc., had its registration as a California corporation suspended by the California Secretary of State (CSOS) on January 30, 2019, and by the California Franchise Tax Board (CFTB) on July 1, 2019; (4) Mr. Kendall, on behalf of respondent, violated the CFL by providing false information on the NMLS forms by answering "No" to the question of whether a state regulatory agency made a finding that he had made a false statement or omission when that finding was made by the department in 2018; (5) since the issuance of respondent Assurance Capital, Inc.'s finance lender and broker license (CFL license number 60DBO-117469) respondent has continued to violate the CFL by failing to obtain the necessary authorization to use the name ZippFund, or the address of 2036 Hornblend Street, Suite B, San Diego, CA 92109, to engage in the business of finance lending under the CFL, and he has conducted finance lending business under that name and address; (6) during an undercover operation respondent failed to disclose that ZippFunding, Inc., ZippFund.com, Zipp, or ZippFund are affiliated with respondent; and (7) respondent solicited finance lending business by using names other than the name on its CFL license.

7. Respondent timely filed a notice of defense, and this hearing followed.

Testimony of [REDACTED]

8. [REDACTED] is currently employed by the department as a Senior Financial Institution Examiner in the California Financing Law Licensing division, a position she has held since August 2017. Her duties in that position include the review and approval or denial of license applications submitted by individuals or companies for licensure by the department, as well as monitoring and oversight of licensees once a license is approved. [REDACTED] has reviewed over 2,000 applications in this position. She explained that a CFL license allows the licensee to make loans to California

borrowers or to refer or broker loans to other CFL licensed lenders or both. Prior to this position, [REDACTED] worked at the California Department of Tax and Fee Administration (CDTFA) as a tax auditor, and prior to that she worked as an accountant at a private Certified Public Accountant (CPA) firm.

9. [REDACTED] explained the application process for a CFL license as noted above. She stated that once an application is submitted to the department through NMLS, or prior to October 1, 2021, directly to the department, it is reviewed by the department to determine if all the necessary requirements are met. [REDACTED] explained that the applicant must maintain an active surety bond, must have met the required net worth, must provide an accurate description of the company's business, and also must pass the criminal background check process. She stated that the department relies on the information provided in the application to be accurate in making licensing decisions. The department also does its due diligence to make sure the applicant is honest by verifying information provided through research conducted during the review process. If an applicant provides a false statement on the application, that alone is grounds for denial of the application.

10. [REDACTED] is familiar with respondent because the department issued CFL license number 60DBO-117469 on April 13, 2021. [REDACTED] was not responsible for reviewing respondent's 2020 application to determine if issuance of a license was appropriate. However, she did review the 2020 application as part of her duties in monitoring respondent after the license was issued. During her monitoring duties for respondent's issued license [REDACTED] reviewed the February 22, 2018, letter submitted by Mr. Kendall to the department, as noted above, as part of the 2018 application. When [REDACTED] discovered the February 22, 2018, letter in the regular files of the department, she reviewed the 2020 application and realized that Mr.

Kendall provided false information on the 2020 application, notably that he had never been convicted, and that he had never been denied a license from any California agency when in fact Mr. Kendall, on behalf of Assurance Partners, Inc., had previously been denied a license by the department in 2018. [REDACTED] testified that if she, or any reviewer for the department, had been aware of Mr. Kendall's 2009 conviction, the CFL license number 60DBO-117469 would not have been issued because Mr. Kendall's false statements on the 2020 application are a violation of Finance Code section 22170, subdivision (b).

11. [REDACTED] also stated that the department does authorize a licensee to use a name different than the name listed on their CFL license to conduct business, but in order to obtain that authorization, the licensee would have to submit a request to the department to use a fictitious name or a "d.b.a. name." The department must approve that request prior to the licensee using the other name to conduct business. [REDACTED] testified that Assurance Capital, Inc., did submit a request to the department to use the d.b.a. of Trust Capital USA, which was approved by the department. However, Assurance Capital, Inc. never submitted any request to the department to use a fictitious name or a d.b.a. of ZippFund.com, Zipp, ZippFunding, or ZippFund, Inc.

12. Additionally, a licensee may not use any address not listed on the CFL license to conduct business under any circumstances. The address listed on CFL license number 60DBO-117469 is 4747 Morena Blvd., Suite 375, San Diego, CA 92109. The address listed on the license is not 2036 Hornblend Street, Suite B, San Diego, CA 92109, and the department never gave authorization to respondent to use that Hornblend Street address to conduct business.

Testimony of [REDACTED]

13. [REDACTED] is currently employed by the department as an Investigator, a position he has held since April 15, 2020. [REDACTED] is a sworn peace officer and has a basic and advanced certificate from the Commission on Peace Officer Standards and Training as a peace officer. He has been a sworn peace officer since January 1985. Prior to working for the department, [REDACTED] worked from January 1985 to 2005 as a patrol officer and as a homicide detective for the Sacramento County Sheriff's Department. From 2005 to 2008, he worked as an investigator for the Sacramento County District Attorney's Office working on cases involving homicide, major fraud, government corruption, and officer involved shootings. [REDACTED] duties in his current position as an Investigator for the department include investigating matters assigned to him, including identifying suspects, locating persons or witnesses, taking statements from witnesses, conducting background searches, locating documents, and conducting undercover operations. [REDACTED] supervisor assigns investigations to him based upon assignments to the supervisor from the department's attorneys.

14. [REDACTED] investigated respondent in this matter because he was assigned to do so by his supervisor. [REDACTED] testified that he was assigned to "download or print the website of ZippFund.com," and to conduct an undercover operation, called an "undercover shop," wherein [REDACTED] poses under an assumed identity as a potential borrower and then contacts ZippFund.com to determine and document if ZippFund.com is conducting business in California by making loans to California borrowers or by referring or brokering those California borrowers to other CFL licensees. [REDACTED] testified that in this case he was trying to determine "who was on the other end" of the ZippFund.com website.

15. As part of his investigation, [REDACTED] went to the ZippFund.com website, printed the entire website, and went to the contact section. He sent an email through the contact information section and waited for someone at ZippFund.com to respond. [REDACTED] stated that the ZippFund.com website used the address of 2036 Hornblend Street, Suite B, San Diego, CA 92109, as its business address. The website uses the following business names: ZippFund, Zipp, and Zipp Funding. [REDACTED] went to the California SOS website and looked up Zipp Funding, Inc. and discovered that ZippFunding, Inc. was registered with the CSOS, the address of record was 2036 Hornblend Street, Suite B, San Diego, CA 92109, and the registered agency was Paul Kendall, listed at the same Hornblend Street address. [REDACTED] also noted that the status of the California registration with the CSOS was "suspended" by both CSOS and CFTB and its "inactive date" was January 30, 2019.

16. According to [REDACTED] as a result of the email request he sent to the contact information on the ZippFund.com website, he was first contacted by telephone and the person left a message for him. Next, he was contacted by text message and also by email at his undercover email address by a person named [REDACTED] of Trust Capital USA. [REDACTED] answered the text message to him by stating that he did not think he contacted Trust Capital USA but instead contacted ZippFund and asked if Trust Capital USA is affiliated with ZippFund. [REDACTED] responded to that text by writing as follows:

Hello [REDACTED], Yes Zippfund is similar to Lending Tree but for businesses. They do not do the lending themselves but send your information to a lender that can help you out. I sent you an email if you would like to schedule a call with me tomorrow or later today.

During the time he communicated with [REDACTED] she never told [REDACTED] that ZippFunding, Inc., was an entity that was suspended from either CSOS or CFTB. [REDACTED] never spoke or communicated with anyone else associated with ZippFunding.com other than [REDACTED]

17. [REDACTED] testified that he discovered through his investigation that ZippFunding, Inc. is owned by Mr. Kendall, and that Assurance Capital, Inc., is also owned by Mr. Kendall, both as demonstrated by the CSOS registration information. [REDACTED] also went to the website for Trust Capital USA, which is the d.b.a. for Assurance Capital, Inc., as approved by the department. He printed that website, as well, as part of his investigation. The Trust Capital USA website did not disclose any relationship between Trust Capital USA and any of the following: Assurance Capital, Inc., ZippFunding, Inc., Zipp, ZippFund.com, or Zipp Fund.

Testimony of [REDACTED]

18. [REDACTED] is currently employed by the department as a Senior Legal Analyst in the Enforcement Division. She has held her current title for three years, but has worked for the department for 22 years, and has worked in the Enforcement Division for 19 years. [REDACTED] duties in her current position include legal research, drafting documents and obtaining certified copies of documents and records, and supervising support staff. In addition to these duties, [REDACTED] is also the custodian of records for the department.

19. [REDACTED] was assigned to obtain documents, including certified documents, in this matter. She testified that she obtained a copy of the CSOS information regarding ZippFunding, Inc. from the California Secretary of State website,

which showed that ZippFunding, Inc.'s registration with CSOS was suspended as of January 30, 2019.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In an administrative license disciplinary proceeding, the burden of proof is upon the party asserting the affirmative. The charges must be established to a reasonable certainty. Guilt cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or upon uncorroborated hearsay. (*Smith, supra*, at p. 457.) The standard of proof in a disciplinary proceeding involving a professional license is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

2. Disciplinary proceedings are not conducted for the purpose of punishing an individual but to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Applicable Statutes

3. Financial Code Section 22170 provides:

(a) It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

(b) It is unlawful for any person to knowingly make an untrue statement to the commissioner or the Nationwide Mortgage Licensing System and Registry during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

4. Financial Code Section 22155 provides:

Subject to Section 22157.1, a finance lender, broker, mortgage loan originator, or program administrator licensee shall not transact the business licensed or make any loan or administer any PACE program provided for by this division under any other name or at any other place of business than that named in the license except pursuant to a currently effective written order of the commissioner authorizing the other name or other place of business. The commissioner's order, while effective, shall be deemed to amend the original license issued pursuant to Section 22105 or 22109.1. Notwithstanding any provision of this section, a finance lender, program administrator, broker, or mortgage loan originator licensee may make any loan and engage in any other business provided for by this division, other than the business described in subdivision (b) of Section 22154, at a place other than the licensed location under either of the following conditions:

(a) The borrower requests, either orally or in writing, that a loan be initiated or made at a location other than the licensee's licensed location. The use by the licensee of a preprinted solicitation form returned to the licensee by the borrower shall not constitute a request by the borrower that a loan be initiated or made at a location other than the licensee's licensed location.

(b) The licensee makes a solicitation or advertises for, or makes an offer of, a loan or assessment contract displayed on "home pages" or similar methods by the licensee on the internet, the World Wide Web, or similar proprietary or common carrier electronic systems, and the prospective borrower or property owner may transmit information over these electronic systems to the licensee in connection with the licensee's offer to make a loan or assessment contract.

5. Financial Code Section 22161, subdivision (a)(3) provides:

(a) A person subject to this division shall not do any of the following:

[¶] . . . [¶]

(3) Advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates,

terms, or conditions for making or negotiating loans, or for making or negotiating assessment contracts, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive, or in the case of a licensee, that refers to the supervision of the business by the state or any department or official of the state. . . .

6. Financial Code Section 22714, subdivision (a) provides:

The commissioner shall suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

[1] . . . [1]

(2) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

(3) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally. . . .

7. Financial Code Section 22707.5 provides:

(a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a licensee or other person is violating or has violated any provision of this

division or any rule or order thereunder, the commissioner or their designee, may issue a citation to the licensee or person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and provide a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars (\$2,500) that shall be deposited in the Financial Protection Fund. In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors including the gravity of the violation, the good faith of the person or licensees cited, and the history of previous violations. In addition, the commissioner may include a claim for ancillary relief. The ancillary relief may include, but not be limited to, refunds, restitution or disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. A citation issued or a fine assessed pursuant to this section, while constituting punishment for a violation of law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited.

(b) Notwithstanding subdivision (a), nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business or

activity or activities, or an order to suspend all business operations to a person or licensee who is engaged in or who has engaged in continued or repeated violations of this division. In any of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If, within 30 days from the receipt of the citation, the licensee or person cited fails to notify the department that they intend to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative fine and an order compelling the cited licensee or person to comply with the order of the commissioner.

(1) The application shall include a certified copy of the final order of the commissioner.

(2) Upon the filing of the application, the superior court shall set a date for a hearing for an order to show cause why judgment should not be entered, which shall be set not less than 60 calendar days from the date the application is filed.

(3) The commissioner shall serve a copy of the application and order along with notice of the hearing to all entities or persons cited in the order against whom a civil judgment is sought not less than 15 calendar days before the date set for the hearing. Service of the application shall be pursuant to the methods specified by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure for service of summons.

(4) The court shall consider the filing of a certified copy of the final order of the commissioner and the proof of service of the application and notice of the hearing on the persons or entities against whom the judgment is sought, a sufficient prima facie showing to warrant the issuance of the civil judgment at the hearing. The respondent then has the burden of showing by affirmative evidence at the hearing why the order of the commissioner is not final, or why the timely notice of application and hearing was not provided to avoid judgment being entered. Any method of service authorized by laws under which the order was issued is considered valid service for the purposes of determining

whether the order is final. Absent this showing by the respondent, the superior court shall issue a final civil judgment compelling compliance with the order.

(5) The judgment issued pursuant to paragraph (4) may be for injunctive relief or payment of ancillary relief or penalties. The judgment may be enforced by the court pursuant to the procedures authorized for any other civil judgment.

(6) This subdivision shall not be construed to limit judicial review of any order of the commissioner in accordance with the law.

Applicable Regulatory Authority

8. California Code of Regulations, title 10, section 1422, provides in part:

(a)(1) On or after October 1, 2021, an applicant shall file an application for a license under the California Financing Law through NMLS in accordance with its procedures, as provided in section 1422.5 of these rules.

(2) On or after the date in paragraph (a)(1), an applicant shall not use the form set forth in this section to initiate an application for a license under the California Financing Law but may use sections of the form as otherwise directed in this subchapter.

STATE OF CALIFORNIA DEPARTMENT OF FINANCIAL
PROTECTION AND INNOVATION INSTRUCTIONS FOR
COMPLETING THE APPLICATION FOR A FINANCE LENDER
OR BROKER LICENSE UNDER THE CALIFORNIA FINANCING
LAW (CFL)

WHO IS REQUIRED TO OBTAIN A LICENSE UNDER THE
CALIFORNIA FINANCING LAW?

In general, any person engaging in the business of a finance lender, a broker, or a program administrator must obtain a license under the California Financing Law. The CFL contains a number of exemptions for persons licensed by other regulatory agencies. The CFL does not contain any licensing exemptions for program administrators, although the definition of "program administrator" excludes certain persons.

A broker license under the CFL only authorizes a broker to broker loans to licensed finance lenders. The license does not provide the broker with the authority to broker loans to and collect brokerage commissions from other types of lenders such as credit unions and banks. Therefore, a broker who brokers loans to financial institutions that are not CFL licensees should confirm that no other state licensing law is applicable to the brokering activity (such as the Real Estate Law).

On or after October 1, 2021, all applicants must initiate an application for a license through NMLS and not through the submission of this application. All licensees must transition onto NMLS by December 31, 2021. . . .

9. California Code of Regulations, title 10, section 1557 provides:

A licensee shall not use "blind" advertisements. "Blind" advertising is an advertisement used to solicit business that gives only a telephone number, post office or newspaper box number, or name other than that of the licensee. For purposes of this section, a licensee includes a mortgage loan originator.

Evaluation

10. Complainant established by clear and convincing evidence that Mr. Kendall, on behalf of respondent, provided false information on both the 2020 application and the NMLS forms submitted under penalty of perjury to the department. Specifically, he falsely answered "No" to the question on both the 2020 application and the NMLS form asking if he had any convictions, and specifically to any convictions involving false statements or omissions, when, in fact, he has a 2009 misdemeanor conviction for filing a false police report. He also falsely answered "No" to the question on both the 2020 application and the NMLS forms of whether he has ever had any state regulatory agency deny his application for licensure, when, in fact, the department denied his application for licensure in 2018. Additionally, Mr. Kendall falsely answered "No" to the question on the NMLS form of whether any state regulatory agency ever found him to have made a false statement or omission, when,

in fact, the department made exactly that finding in its 2018 order denying the 2018 application. Also, Mr. Kendall falsely answered "No" on the NMLS forms to the question of whether any state regulatory agency has ever suspended his registration, when, in fact, CSOS had suspended the registration of ZippFunding, Inc., in 2019. Each of these acts of providing false information in the 2020 application and the NMLS forms are a violation of Financial Code section 22170, subdivision (b).

11. Complainant also established by clear and convincing evidence that respondent conducted finance lending business through the use of the ZippFund.com website using the names Zipp, ZippFund, and ZippFunding, located at a different address than that listed in respondent's CFL license. [REDACTED] testimony that when he contacted ZippFunding.com by email, he was only contacted by [REDACTED] who identified herself as being from Trust Capital USA, which is the fictitious name approved by the department for Assurance Capital, Inc. [REDACTED] never explained that ZippFund.com was directly associated with Assurance Capital, Inc., and they are owned by the same individual, namely Mr. Kendall. Accordingly, complainant established that respondent violated Financial Code section 22155 and California Code of Regulations, title 10, section 1557 by blind advertising and by soliciting business using the ZippFund.com website and related names. However, complainant did not establish that respondent wrongly engaged in blind advertising or soliciting business by using the Trust Capital USA name because that name was approved by the department as a d.b.a. of Assurance Capital, Inc. Complainant also established that respondent violated Financial Code section 22161, subdivision (a)(3), by failing to disclose to [REDACTED] posing as a California borrower, that ZippFund.com was affiliated with Assurance Capital, Inc. and owned by the same individual.

12. Finally, complainant also seeks administrative fines in the amount of \$2,500 for each violation of the Financial Code or related regulations as found pursuant to Financial Code section 22707.5, which provides authority for the department to issue a citation to a licensee. Under that code section, the department may issue such citation "in writing, describing with particularity the basis of the citation," and "each citation may assess an administrative fine not to exceed two thousand five hundred dollars (\$2,500)" This code section also provides, "A citation issued or a fine assessed pursuant to this section, while constituting punishment for a violation of law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited." Notably, the department has never previously issued a citation to respondent in this matter and argued at hearing that the accusation itself was also the citation. Complainant's argument that the accusation serves as the citation is rejected. The accusation in this matter seeks revocation of respondent's license, which is a form of license discipline separate from a citation. The accusation itself does not serve the dual purpose of also being a citation, and it is not written as such. The department simply failed to ever issue a separate citation in this matter for which administrative penalties could be sought. Accordingly, complainant's request for administrative fines against respondent pursuant to Financial Code section 22707.5 is denied.

13. Respondent failed to appear at the hearing and provided no evidence in mitigation, explanation or rehabilitation.

Cause for Discipline Exists

14. Cause exists to impose discipline respondent's CFL license under Financial Code section 22170, subdivision (b) based upon Mr. Kendall's providing false

information regarding his 2009 conviction on both the 2020 application and the NMLS forms.

15. Cause exists to impose discipline respondent's CFL license under Financial Code section 22170, subdivision (b), based upon Mr. Kendall's providing false information on the 2020 application and the NMLS forms regarding his denial of a license by the department from the 2018 application.

16. Cause exists to impose discipline respondent's CFL license under Financial Code section 22170, subdivision (b), based upon Mr. Kendall's act of providing false information on the NMLS forms regarding the fact that the department denied the 2018 application and found that respondent made false statements on the 2018 application.

17. Cause exists to impose discipline respondent's CFL license under Financial Code section 22170, subdivision (b), based upon Mr. Kendall's act of providing false information on the NMLS forms regarding the fact that the CSOS suspended the registration of ZippFunding, Inc., a company owned and operated by Mr. Kendall.

18. Cause exists to impose discipline respondent's CFL license under Financial Code section 22155, and California Code of Regulations, title 10, section 1557 based upon respondent's use of a name and address other than that listed on the CFL license to conduct finance lending business, namely he used Zipp, ZippFund, ZippFunding, and ZippFund.com as the name to conduct business and at the Hornblend address not listed on the CFL license. However, complainant failed to establish that respondent's use of the name Trust Capital USA was a violation of these

statutory and regulatory sections because the department had previously approved the Trust Capital USA as a d.b.a. of Assurance Capital, Inc.

19. Cause exists to impose discipline respondent's CFL license under Financial Code section 22161, subdivision (a)(3), based upon respondent's failure to disclose to [REDACTED] during the undercover investigation that ZippFund.com was affiliated with Assurance Capital, Inc., and that both companies are, in fact, owned and operated by Mr. Kendall.

Cause Does Not Exist for the Levy of Administrative Fines

20. Cause does not exist to levy administrative fines by issuance of a citation pursuant to Financial Code section 22707.5 as explained above.

Appropriate Discipline

21. Because cause for discipline of respondent's CFL license has been found, consideration must be given for the appropriate discipline that must be imposed. Respondent's violations of statutes and regulations in this matter are very serious and Mr. Kendall's long history of providing false statements to the department and police poses a direct threat to public safety in the financial lending business. Upon consideration of all the evidence provided, the only measure of discipline that will provide for public protection is the revocation of respondent's CFL license.

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ORDER

CFL license number 60DBO-117469 issued by the Department of Financial Protection and Innovation to respondent Assurance Capital Inc., d.b.a. Trust Capital USA, also known as ZippFund.com, is revoked.

DATE: August 7, 2023

A solid black rectangular box used to redact the signature of the Administrative Law Judge.

DEBRA D. NYE-PERKINS

Administrative Law Judge

Office of Administrative Hearings