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Commissioner
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8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:)
13)
14 THE COMMISSIONER OF FINANCIAL) CFL LICENSE Nos.: 60DBO-131051
PROTECTION AND INNOVATION,) 60DBO-131052
15) 60DBO-131053
16 Complainant.) 60DBO-131054
17)
18 v.) **CONSENT ORDER**
19)
20 AB COMMERCIAL REAL ESTATE DEBT)
FUND IV SICAV-SIF S.C.SP.,)
21)
22 Respondent.)
23)

24 This Consent Order is entered into between the Commissioner of Financial Protection and
25 Innovation (Complainant or Commissioner) and Respondent AB COMMERCIAL REAL ESTATE
26 DEBT FUND IV SICAV-SIF S.C.SP. (Respondent) and is made with respect to the following facts:

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I.
RECITALS

A. The Commissioner 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) (Fin. Code, § 22000 et seq.).¹

B. Respondent is a Luxembourg limited partnership.

C. Respondent has a principal place of business at 1345 Avenue of the Americas, New York, New York 10105.

D. Respondent was licensed as a finance lender under the California Financing Law (CFL) (Fin. Code, § 22000, et seq.) with license numbers 60DBO-131051, 60DBO-131052, 60DBO-131053, and 60DBO-131054 from June 3, 2021, through December 29, 2023.

E. In accordance with Section 22107, each finance lender, broker, or program administrator licensee shall pay to the Commissioner its pro rata share of all costs and expenses, including the costs and expenses associated with the licensing of mortgage loan originators it employs, reasonably incurred in the administration of this division, as estimated by the Commissioner, for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. CFL licensees must pay the annual assessment on or before the 31st day of October each year.

F. Under Section 22150, Complainant may make general rules and regulations and specific rulings, demands, and findings for the enforcement of, and within the general purposes of, the CFL.

G. Pursuant to a Commissioner’s Order on Electronic Communications, dated November 22, 2013, each CFL licensee must establish an email address for communications from the Commissioner (Designated Email Address).

H. The Commissioner sent Respondent an Assessment Notice via email to the Respondent’s Designated Email Address on September 28, 2023. The notice stated that the annual

¹ Cal. Fin. Code § 22000, *et seq.* All subsequent statutory references are to the California Financial Code unless otherwise specified.

1 assessment would become delinquent if not paid by October 31, 2023. The Commissioner then sent
2 the annual assessment invoice by mail to the Respondent’s address on file with the Department
3 (Registered Address) on September 29, 2023. The Commissioner also posted an invoice for payment
4 of the annual assessment on the Respondent’s account on the Nationwide Multistate Licensing
5 System and Registry (NMLS) on October 2, 2023.

6 I. As of October 31, 2023, Respondent had not paid its annual assessment. The failure
7 to pay the annual assessment on or before October 31, 2023, represents a violation of Section 22107.

8 J. As of November 10, 2023, Respondent had not paid its annual assessment. As a
9 result, the Commissioner sent to Respondent’s Designated Email Address a Notice of Unpaid
10 Assessment on November 13, 2023. The notice warned that failure to pay the assessment would
11 result in summary revocation of Respondent’s license. Respondent did not respond to the
12 Commissioner’s notice.

13 K. As of December 18, 2023, Respondent had not paid its annual assessment. As a
14 result, on December 18, 2023, the Commissioner issued an Order Summarily Revoking California
15 Financing Law License Pursuant to Financial Code Section 22107 for CFL license number 60DBO-
16 131051 (Revocation Order), and impliedly branch license numbers 60DBO-131052, 60DBO-
17 131053, and 60DBO-131054. The Department mailed the Revocation Order to the Registered
18 Address along with notice that the Revocation Order would become effective December 29, 2023,
19 unless payment of the annual assessment was received by close of business on December 27, 2023.

20 L. As of December 27, 2023, the assessment remained unpaid. As such, the Revocation
21 Order became effective December 29, 2023. Respondent paid the assessment on December 29, 2023.

22 M. Respondent admits to the jurisdiction of the Commissioner and it is the intention of
23 the parties to resolve this matter without the necessity of a hearing and/or other litigation.

24 N. The Commissioner finds that entering into this Consent Order is in the public interest
25 and consistent with the purposes fairly intended by the CFL.

26 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
27 forth herein, the parties agree as follows:
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II.

TERMS AND CONDITIONS

1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy and expediency and without the uncertainty and expense of a hearing or other litigation.

2. Desist and Refrain Order. Pursuant to Section 22712, Respondent is hereby ordered to desist and refrain from failing to timely pay the annual assessment in violation of Section 22107.

3. Order Rescinding Revocation Order. The Commissioner hereby rescinds the Revocation Order, which was issued on December 18, 2023, and became effective on December 29, 2023, as of the effective date of revocation.

4. Administrative Penalties and Fines. Respondent shall pay administrative penalties and fines in the amount of \$2,500.00 for the violation of the CFL enumerated herein. The penalties and fines shall be paid to the Commissioner within 30 days of the Effective Date of this Consent Order as defined in paragraph 25. All penalties and fines shall be labeled “penalties and fines” and made payable in the form of a cashier’s check or Automated Clearing House deposit to the “Department of Financial Protection and Innovation,” and transmitted to the attention of:

ATTN: Accounting
Department of Financial Protection and Innovation
2101 Arena Boulevard
Sacramento, California 95834

Notice of payment shall be made via email to Noah Bean, Senior Counsel at Department of Financial Protection and Innovation, at noah.bean@dfpi.ca.gov.

5. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraphs 2 or 4, the Commissioner may summarily revoke Respondent’s licenses.

6. Waiver of Notice and Hearing Rights. Respondent acknowledges the Commissioner is ready, willing, and able to proceed with a hearing on the summary revocation order. Respondent hereby waives the right to any notice or hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law. By waiving such rights, Respondent effectively consents to this Consent Order becoming final.

1 7. Full and Final Resolution. The parties hereby acknowledge and agree that this
2 Consent Order is intended to constitute a full and final resolution of the violations described herein,
3 and that no further proceedings or actions will be brought by the Commissioner in connection with
4 these matters except under the CFL or any other provision of law, excepting therefrom any
5 proceeding to enforce compliance with the terms of this Consent Order.

6 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
7 revoked, and the Commissioner may pursue any and all remedies available under law against
8 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
9 misrepresented information used for and relied upon in this Consent Order.

10 9. Future Actions by Commissioner. If Respondent fails to comply with the terms of the
11 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
12 resolved under this Consent Order except insofar as Respondent’s obligations hereunder have been
13 otherwise performed. The Commissioner reserves the right to bring any future actions against
14 Respondent, or any of its partners, owners, officers, shareholders, directors, employees, or
15 successors for any and all unknown violations of this CFL.

16 10. Assisting Other Agencies. Nothing in this Consent Order limits the
17 Commissioner’s ability to assist any other government agency (city, county, state or federal) with
18 any prosecution, administrative, civil or criminal action brought by that agency against Respondent
19 or any other person based on any of the activities alleged in this matter or otherwise.

20 11. No Presumption Against Drafter. Each party acknowledges that it has had the
21 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
22 intend no presumption for or against the drafting party will apply in construing any part of this
23 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
24 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
25 language of a contract should be interpreted most strongly against the party who caused the
26 uncertainty to exist.

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1 12. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
2 has had the opportunity to receive independent advice from an attorney(s) and/or representatives
3 with respect to the advisability of executing this Consent Order.

4 13. Headings. The headings to the paragraphs of this Consent Order are inserted for
5 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
6 the provisions hereof.

7 14. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
8 interest.

9 15. Reliance. Each of the parties represents, warrants, and agrees that in executing this
10 Consent Order, it has relied solely on the statements set forth herein and the advice of its own legal
11 counsel, if represented. Each of the parties further represents, warrants, and agrees that in executing
12 this Consent Order it has placed no reliance on any statement, representation, or promise of any
13 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
14 party or any other person or entity to make any statement, representation, or disclosure of anything
15 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
16 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of
17 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

18 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
19 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
20 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
21 provision. No waiver by either party of any breach of, or of compliance with, any condition or
22 provision of this Consent Order by the other party will be considered a waiver of any other condition
23 or provision or of the same condition or provision at another time.

24 17. Full Integration. This Consent Order is the final written expression and the complete
25 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
26 between the parties with respect to the subject matter hereof, and supersedes all prior or
27 contemporaneous agreements, negotiations, representations, understandings, and discussions
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1 between and among the parties, their respective representatives, and any other person or entity, with
2 respect to the subject matter covered hereby.

3 18. Governing Law. This Consent Order will be governed by and construed in
4 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court
5 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
6 forum to the maintenance of such action or proceeding in such court.

7 19. Counterparts. This Consent Order may be executed in one or more separate
8 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
9 together constitute a single document.

10 20. Effect Upon Future Proceedings. If Respondent applies for any license, permit or
11 qualification under the Commissioner’s current jurisdiction, or are the subject of any future action by
12 the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for
13 the purpose of such application(s) or enforcement proceeding(s).

14 21. Voluntary Agreement. Respondent hereby enters into this Consent Order voluntarily
15 and without coercion and acknowledges that no promises, threats, or assurances have been made by
16 the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each
17 represent and acknowledge that he, she or it is executing this Consent Order completely voluntarily
18 and without any duress or undue influence of any kind from any source.

19 22. Notice. Any notice required under this Consent Order shall be provided to each party
20 at the following addresses:

21 To Respondent: AB COMMERCIAL REAL ESTATE DEBT FUND IV
22 SICAV-SIF S.C.SP.
23 Meaghan McTigue, Assistant Vice President
24 1345 Avenue of the Americas
25 New York, New York 10105
26 Meaghan.McTigue@AllianceBernstein.com

27 To the Commissioner: Noah M. Bean, Senior Counsel
28 Department of Financial Protection and Innovation
2101 Arena Blvd
Sacramento, California 95691
Noah.Bean@dfpi.ca.gov

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23. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

24. Public Record. Respondent hereby acknowledges that the Consent Order is and will be a matter of public record.

25. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following email address: Meaghan.McTigue @AllianceBernstein.com.

26. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: January 12, 2024
Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: January 9, 2024

AB COMMERCIAL REAL ESTATE DEBT FUND IV
SICAV-SIF S.C.SP.

By _____
Meaghan McTigue, Assistant Vice President