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

13 In the Matter of:) CRMLA LICENSE NO.: 4130994
) CFL LICENSE NO.: 6032484
14 THE COMMISSIONER OF FINANCIAL PROTECTION)
AND INNOVATION,)
15)
16 Complainant,)
) ACCUSATION IN SUPPORT OF
17 v.) NOTICE OF INTENTION TO ISSUE
) ORDERS REVOKING LICENSES
18 CALIBER HOME LOANS, INC.) AND LEVYING PENALTIES
)
19 Respondent.)
20)
21)
22)

23 Clothilde V. Hewlett, Commissioner of the Department of Financial Protection and
24 Innovation (Commissioner or Department), brings this action in the public interest and
25 alleges and charges as follows:
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I.

Introduction

1. The Commissioner is authorized to administer and enforce the provisions of the California Residential Mortgage Lending Act (CRMLA) (Cal. Fin. Code §§ 50000 – 50706) and the California Financing Law (CFL) (Cal. Fin. Code §§ 22000-22780.1).

2. At all relevant times, Caliber Home Loans, Inc. (Caliber) is and was a company licensed as a residential mortgage lender and servicer under the authority of the CRMLA, CRMLA license number 413-0994, beginning on September 21, 2009 and licensed as a finance lender under the authority of the CFL, CFL license number 603-2484, beginning on July 1, 1995, with a business address of 1525 South Belt Line Road, Coppell, TX 75019. Caliber employs mortgage loan originators.

II.

2016 Regulatory Examination

A.

Trust Accounting

3. On December 5, 2016, the Department commenced a regulatory examination of Caliber. A review of the balance sheets provided by Caliber during the examination disclosed that as of October 31, 2016, Caliber had failed to establish a custodial account for borrowers trust funds as required under Financial Code section 50202. Instead, escrow funds collected from borrowers at closing were deposited into Caliber’s operating account until transferred to the servicing system. Caliber was directed to establish a trust account for borrower escrow funds and establish policies and procedures to prevent future commingling of borrowers’ escrow funds with the operating account.

4. A further review of Caliber’s balance sheet, trial balance, trust account bank statements and bank reconciliation as of October 31, 2016 (October 2016 Financials) and March 31, 2017 (March 2017 Financials) revealed that Caliber also failed to reconcile its escrow liability ledgers to its control account at least once a month in violation of California Code of Regulations, title 10, section 1950.314.1. As a result of Caliber’s failure to reconcile its escrow liability ledgers on a regular basis as required by the CRMLA, debit balances were found in the following accounts based on the October

1 2016 Financials:

- 2 - Escrow Holdback Accounts for VA Loans – (\$56,006.71)
- 3 - MIP / PMI/ USDA Accounts – (\$561,375.20)
- 4 - Appraisal Fee Accounts – (\$1,594,579.85)

5 A subsequent review of the March 2017 Financials reflected that the following accounts continued to
6 contain debit balances:

- 7 - Borrower Trust Accounts – (\$1,815,057.52)
- 8 - Escrow Holdback Accounts for VA Loans – (\$3,978.75)
- 9 - MIP / PMI/ USDA Accounts – (\$481,793.46)
- 10 - Appraisal Fee Accounts – (\$1,594,779.85)

11 Additionally, an overage of \$179,548.46 was found in the Rate Lock Fee Accounts because funds
12 were not being transferred out on a timely basis because of Caliber failed to timely reconcile its books.
13 Debit balances are prohibited under California Code of Regulations, title 10, section 1950.314.6.

14 5. Subsequently, the trust accounting shortages were corrected by Caliber prior to the
15 closing of the exam in 2018.

16 **B.**

17 **Per Diem Interest Overcharges**

18 6. The 2016 regulatory examination further disclosed that in 6 out of the 38 funded loans
19 in the loan sample, or approximately 16% of the loans reviewed, Caliber was overcharging the
20 borrower per diem interest in excess of one day prior to disbursement of loan proceeds in violation of
21 Civil Code section 2948.5 and Financial Code section 50204 (o). The range of per diem interest was
22 between \$35.29 to \$177.54. Caliber overcharged borrowers between one (1) to three (3) days of
23 interest.

24 7. As a result of these findings, Caliber was directed to conduct a self-audit report to the
25 Commissioner regarding per diem interest charges for all loans originated from 2012 to 2016. Caliber
26 only conducted a review of 598 loans and the self-audit found that 56 out of 598 loans, or 9%
27 contained per-diem overcharges.

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III.

Demand for Self Audit

8. On or around July 16, 2019, the Department issued a demand letter requesting that Caliber conduct a self-audit regarding per diem interest charges for all loans originated from 2012 to July 2019; (2) make appropriate refunds based upon the loans that Caliber discovered were overcharged; and (3) submit a report to the Commissioner as to the findings of the self-audit (self-audit report). The self-audit report was produced on an ongoing basis, with reports received on October 24, 2019, December 31, 2019, February 7, 2020, and August 3, 2020.

9. The findings of the self-audit report showed that out of the 64,749 loans reviewed, the self-audit report identified 4,912 loans that were overcharged per diem interest, or 10.73% of the loan population. The overcharges totaled approximately \$550,316.46, which was refunded to borrowers.

IV.

2020 Regulatory Examination

10. On or about September 8, 2020, the Department commenced a regulatory examination of Caliber (2020 Examination). The 2020 Examination disclosed that Caliber was still overcharging borrowers per diem interest in excess of one day prior to disbursement of loan proceeds in violation of Civil Code section 2948.5 and Financial Code section 50204 (o).

V.

Applicable Law

11. The violations of the CRMLA described above, if committed by Caliber on or before having sought a license from the Department under the CRMLA and the CFL, would have constituted grounds for the Commissioner to deny the application of Caliber under the CFL (Financial Code section 22109) and CRMLA (Financial Code section 50125).

Thus, a fact or condition now exists that, if it had existed at the time of the original application of Caliber for a license under the CRMLA and CFL, reasonably would have warranted the Commissioner in refusing to issue the license.

12. California Financial Code section 22714 provides in pertinent part:

(a) The commissioner shall suspend or revoke any license, upon notice and

1 reasonable opportunity to be heard, if the commissioner finds any of the
2 following:

- 3 (2) The licensee has violated any provision of this division or any rule or
4 regulation made by the commissioner under and within the authority of
5 this license.
6 (3) A fact or condition exists that, if it had existed at the time of the
7 original application for a license, reasonably would have warranted
8 the commissioner in refusing to issue the license originally.

9 13. California Financial Code section 50327 provides in pertinent part:

10 (a) The commissioner may, after notice and a reasonable opportunity to be
11 heard, suspend or revoke any license, if the commissioner finds that:

- 12 (1) The licensee has violated any provision of this division or any rule or
13 order of the commissioner thereunder.
14 (2) Any fact or condition exists that, if it had existed at the time of the
15 original application for the license, reasonably would have warranted the
16 commissioner in refusing to issue the license originally.

17 14. California Financial Code section 50513 provides in pertinent part:

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

19 (4) Impose fines on a mortgage loan originator or any residential mortgage
20 lender or servicer licensee employing a mortgage loan originator pursuant
21 to subdivisions (b), (c), and (d).

22 (b) The commissioner may impose a civil penalty on a mortgage loan
23 originator or any residential mortgage lender or servicer licensee
24 employing a mortgage loan originator, if the commissioner finds, on the
25 record after notice and opportunity for hearing, that the mortgage loan
26 originator or any residential mortgage lender or servicer licensee
27 employing a mortgage loan originator has violated or failed to comply with
28 any requirement of this division or any regulation prescribed by the
commissioner under this division or order issued under authority of this
division.

(c) The maximum amount of penalty for each act or omission described in
subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the
commissioner is a separate and distinct violation or failure.

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15. The Commissioner finds that, by reason of the foregoing, Caliber has violated Financial Code sections 50202 and 50204 (o) and California Code of Regulations, title 10, sections 1950.314.1 and 1950.314.6 of the CRMLA. Furthermore, based upon Caliber’s violations of the CRMLA, a fact or condition now exists, that if it had existed at the time of original licensure under both the CRMLA and CFL, reasonably would have warranted the Commissioner in refusing to issue a CRMLA and CFL license to Caliber.

For all the foregoing reasons, grounds exist to:

- (1) revoke Caliber’s CRMLA residential mortgage lender and servicer license and CFL finance lenders license, and
- (2) levy penalties upon Caliber pursuant to Financial Code section 50513(b).

WHEREFORE, IT IS PRAYED that:

- 1. Pursuant to Financial Code section 50327, the residential mortgage lender and servicer license of Caliber be revoked;
- 2. Pursuant to Financial Code section 22714, the finance lender license of Caliber be revoked;
- 3. Pursuant to Financial Code section 50513(b), a penalty be levied against Caliber for failure to reconcile its escrow liability ledgers to its control account at least once a week and to the bank statement at least once each month, in violation of California Code of Regulations, title 10, section 1950.314.1, in an amount of at least \$25,000, or according to proof;
- 4. Pursuant to Financial Code section 50513 (b), a penalty be levied against Caliber for debit balances in its escrow impound trust account, in violation of California Code of Regulations, title 10, section 1950.314.6, in an amount of at least \$25,000, or according to proof; and
- 6. Pursuant to Financial Code section 50513 (b), penalties be levied against Caliber for at least 4,912 violations of Financial Code section 50204 (o), whereby Caliber overcharged borrowers per diem interest, in an amount of at least \$1,000 per violation, for a total amount of

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penalties of at least \$4,912,000.00 or according to proof.

Dated: July 19, 2024
Los Angeles, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and
Innovation

By _____
JOHNNY O VUONG
Senior Counsel
Enforcement Division