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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,)
) STATEMENT OF FACTS IN
17 v.) SUPPORT OF ORDER TO
) DISCONTINUE VIOLATIONS
18 CALIBER HOME LOANS, INC.) PURSUANT TO CALIFORNIA
) FINANCIAL CODE SECTION 50321
19 Respondent.) AND NOTICE OF INTENTION TO
20) MAKE ORDER FINAL
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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STATEMENT OF FACTS IN SUPPORT OF ORDER TO DISCONTINUE
VIOLATIONS PURSUANT TO CALIFORNIA FINANCIAL CODE SECTION 50321
AND NOTICE OF INTENTION TO MAKE ORDER FINAL

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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 borrower’s 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

1 required by the CRMLA, debit balances were found in the following accounts based on the October
2 2016 Financials:

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

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

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

12 Additionally, an overage of \$179,548.46 was found in the Rate Lock Fee Accounts because funds
13 were not being transferred out on a timely basis because Caliber failed to timely reconcile its books.

14 Debit balances are prohibited under California Code of Regulations, title 10, section 1950.314.6.

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

17 **B.**

18 **Per Diem Interest Overcharges**

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

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

1 contained per-diem overcharges.

2 **III.**

3 **Demand for Self Audit**

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

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

13 **IV.**

14 **2020 Regulatory Examination**

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

19 **V.**

20 **Applicable Law**

21 11. California Financial Code section 50321 provides in pertinent part :

22 If, after investigation, the commissioner has reasonable grounds to believe
23 that any licensee is violating or has violated its articles of incorporation or
24 any law or rule binding upon it, the commissioner shall, by written order
25 addressed to the licensee, direct the discontinuance of the violation. The
26 order shall be effective immediately, but shall not become final except in
27 accordance with the provisions of Section 50323.

28 12. California Financial Code section 50323 provides in pertinent part:

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(a) No order issued pursuant to Section 50321 or 50322 may become final except after notice to the affected licensee of the commissioner’s intention to make the order final and of the reasons for the finding. The commissioner shall also notify the licensee that upon receiving a request the matter will be set for hearing to commence within 15 business days after receipt. The licensee may consent to have the hearing commence at a later date. If no hearing is requested within 30 days after the mailing or service of the required notice, and none is ordered by the commissioner, the order may become final without hearing and the licensee shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the powers granted under that act. If, upon the hearing, it appears to the commissioner that the licensee is conducting or has conducted business in an unsafe and injurious manner or is violating or has violated its articles of incorporation or any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the licensee shall immediately discontinue the practices named in the order.

(b) The licensee has 10 days after an order is made final to commence an action to restrain enforcement of the order. If the enforcement of the order is not enjoined within 10 days by the court in which the action is brought, the licensee shall comply with the order.

WHEREFORE, good cause showing, the Commissioner is issuing an Order to Discontinue Violations Pursuant to Financial Code Section 50321 and notifying Caliber of her intention to make the order final.

Dated: July 19, 2024
Los Angeles, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and
Innovation

By _____
JOHNNY O VUONG
Senior Counsel
Enforcement Division