

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

APR 22 2013

DEPARTMENT OF REAL ESTATE
By R. Frost

In the Matter of the Accusation of)
)
ROBERT ANTHONY CRUMRINE,) NO. H-11373 SF
)
Respondent.) OAH NO. 2012100404
)
_____)

DECISION

The Proposed Decision dated March 21, 2013, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision revokes your real estate salesperson license and your mortgage loan originator endorsement to that license, but grants you the right to a restricted real estate salesperson license and a restricted mortgage loan originator endorsement.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on MAY 13 2013.

IT IS SO ORDERED

4/18/2013

REAL ESTATE COMMISSIONER


WAYNE S. BELL

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ROBERT ANTHONY CRUMRINE

Respondent.

Case No. H-11373 SF

OAH No. 2012100404

PROPOSED DECISION

Administrative Law Judge Adrienne J. Miller, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on March 11, 2013.

Annette E. Ferrante, Counsel, represented complainant E. J. Haberer, II, Deputy Real Estate Commissioner of the State of California.

Respondent Robert Anthony Crumrine appeared and represented himself.

The matter was submitted on March 11, 2013.

FACTUAL FINDINGS

1. Complainant E. J. Haberer, II, filed the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent Robert Anthony Crumrine is licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code) as a real estate salesperson, and he has a license endorsement and/or has license endorsement rights under the Code as a mortgage loan originator. Respondent's real estate salespersons' license was originally issued as of May 23, 2002. Respondent's license expires on May 22, 2014. On November 1, 2010, respondent applied for an individual mortgage loan originator (MLO) license endorsement.

3. On August 30, 2010, in response to Question 8 (C) of the License Endorsement application: "Do you have any unsatisfied judgment or liens against you?" Respondent answered "No."

4. On September 17, 2010, in Alameda County Superior Court, a default judgment was rendered against respondent in favor of creditor/plaintiff, Jonathan Neil & Associates, Inc., a corporation, (plaintiff) in the amount of \$61,435.77.

Facts and Circumstances Surrounding Default Judgment

5. Respondent opened a line of credit on October 22, 2007, with Bank of the West for his real estate business in the amount of \$50,000. Respondent used this line of credit to help Denise Castenada, a private client, to purchase her first home. Ms. Castenada's home was subsequently foreclosed in 2008 and respondent was not repaid. Respondent did not sue Ms. Castenada.

6. Respondent initially paid \$500 per month on the line of credit. He made payments for one year until August 2008. In August 2008, respondent's payments stopped due to personal financial problems. Respondent tried to renegotiate the outstanding loan with the bank, (lower the monthly payments) but the bank refused to negotiate with him. The bank turned the outstanding loan over to plaintiff, Jonathan Neil & Associates, Inc., a corporation. On March 1, 2010, the plaintiff filed suit for non-payment of the loan in the amount of \$46,219.47 and \$8,000 for attorney's fees.

7. In March 2010, respondent was served with the lawsuit. On April 8, 2010, respondent filed an answer with the court and requested a filing fee waiver for \$355. On May 12, 2010, the fee waiver request was denied and respondent never paid the filing fee for his answer. Respondent's answer was never considered by the court.

8. Respondent never received notice of the default judgment because at the time the default judgment was entered he was experiencing other financial difficulties and was not accepting certified mail from his creditors, including possibly the notice of the default from the plaintiff.

9. In 2012 respondent sold his own personal rental property to pay his many creditors, including plaintiff. Respondent paid plaintiff \$45,000 on their outstanding debt.

10. On August 15, 2012, respondent received a Full Acknowledgement of Satisfaction of Judgment.

Application for Mortgage Loan Originator License Endorsement (MLO Endorsement)

11. On August 30, 2010, when respondent initially applied for a MLO Endorsement the default judgment had not been entered against him. Respondent did not know that every time he changed information on the Nationwide Mortgage License System & Registry (NMLS) that he was up-dating all of his background information, including whether or not there was an unsatisfied judgment against him and that he was making an oath that: "... (1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this

application, are current, true, accurate and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law; (2) To the extent any information previously submitted is not amended and hereby, such information remains accurate and complete;" and "... (4) to keep the information contained in this form current and to file accurate supplementary information on a timely basis" Respondent changed information on the NMLS three times after the default judgment was entered. On November 1, 2010, he requested a criminal background check and credit report for his MLO Endorsement application. On January 20, 2011, he requested an additional credit report and on February 2, 2011, he changed his phone number and fax number. Respondent did not understand that every time he changed information or requested information on the NMLS he was making an additional oath that all the information in the NMLS was true, accurate and complete, including the information about the unsatisfied judgment. Respondent believed that the application process was a continuous process and did not realize that he had to answer all previous questions again, especially if the answers had changed. Respondent did not read the oath carefully.

12. Respondent was sincere and credible when he explained that the application process had changed since January 1, 2010, and he did not intentionally mislead or misstate the fact that there was an unsatisfied judgment against him when he answered question 8(C) as set forth in Finding 3. He has since learned that every time he enters the NMLS website to make a change or request information he is reaffirming that all information is current, accurate and true.

13. Respondent went through some very difficult financial setbacks from 2008 to 2012. He did not have the money to pay his line of credit or other debts, during this time period. When the real estate market improved and his personal rental property's fair market value improved and his tenant vacated the premises, he sold his property and paid off his judgment and other creditors.

14. Respondent has been married for 21 years and is the father of three children; two of his children are minors, ages 10 and 12 years old. Respondent has been a real estate salesperson for over 10 years. Prior to working as a real estate salesperson he worked as a sales manager for Schwan's Sales Enterprises, a frozen food company. He supervised 50 people while working for Schwan's. After this position respondent began working for Rainbow Funding and Realty and eventually applied for and received his real estate salesperson's license.

15. In 1989, respondent received an undergraduate degree in Business Management with a minor in Economics from San Jose State University. In 2002, respondent received a Masters in Business Administration from the Keller Graduate School of Management from DeVry University. He is proud of the fact that he was first in his class.

16. Respondent has had no disciplinary actions against him since he started his career in real estate. He knows that he must read all documents that he signs or that he asks

his clients to sign. However, his own failure to read the application and oath for the application was a mistake and not an intentional act to mislead or misstate the facts.

Cost Recovery

17. The department has incurred legal costs in the investigation and enforcement of this case in the amount of \$400.25 for legal fees. In the absence of evidence to the contrary, this amount is found to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10166.05, subdivision (c), authorizes the denial of an applicant's request for a license endorsement to act as a mortgage loan originator if the applicant fails to demonstrate the financial responsibility, character and general fitness as to command the confidence of the community. Cause exists to deny respondent's application for MLO endorsement as set forth in Factual Findings 4 through 8. However, there are mitigating facts set forth in Factual Findings 9 through 10, wherein respondent met his financial responsibility and repaid the unsatisfied judgment against him.

2. Business and Professions Code section 10177, subdivision (a), authorizes the suspension or revocation of a licensee if the licensee has procured, or attempted to procure, a real estate license or license renewal, for himself by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license renewal. Cause exists to suspend or revoke respondent's real estate salesperson license and his MLO endorsement as set forth in Factual Findings 3 through 8 and 11.

Respondent was credible and sincere when he stated that he was unaware of the requirement to answer all questions on the NMLS every time he logged into the system to make an inquiry or make a simple change of his phone number and fax number, however he is required to read all documents carefully and should have read the oath after each new entry or inquiry that the information on NMLS was true, accurate and current. He also should have made attempts to determine the status of the pending legal action against him for failure to pay his line of credit. Respondent should have realized that the legal proceeding regarding his unpaid debt was not just going to go away and it was his responsibility to determine the status of the litigation and report the status of this litigation to the department. In addition, respondent's education gives him sufficient knowledge to know that he is financially responsible for his debts. However, it would not be contrary to the public interest to allow respondent to a restricted salesperson license and obtain a restricted mortgage loan originator endorsement, where he would be working under the supervision of a broker.

3. Business and Professions Code section 10106 provides that a licensee found to have committed a violation of the Real Estate Law may be ordered to pay a sum not to exceed the reasonable costs of investigation and prosecution. By reason of the matters set forth in Legal Conclusions 1 and 2, cause exists to require respondent to pay the actual costs of the real estate counsel time for the investigation and enforcement of this case.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing board must consider in assessing costs. The board must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some of the charges or a reduction in the severity of the penalty; the board must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; and the board must consider a respondent's ability to pay.

None of the factors enumerated by the court in *Zuckerman* militate against imposing the entire cost recovery requested by the complainant. The basis for the accusation is respondent's misconduct in not reporting the unsatisfied judgment against him. Respondent did not present evidence that he is unable to pay the cost award requested by complainant. Accordingly, cause exists to require respondent to pay the \$400.25 for the actual costs of the real estate counsel time for the investigation and enforcement of this case.

ORDER

1. All license and licensing rights of Respondent Robert Anthony Crumrine under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license and a restricted mortgage loan originator endorsement shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license and mortgage loan originator endorsement within 90 days from the effective date of this Decision. The restricted license and restricted mortgage loan originator endorsement issued to Respondent shall be subject to all the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code.

1. The restricted license and restricted mortgage loan originator endorsement issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license and restricted mortgage loan originator endorsement issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license and restricted mortgage loan originator endorsement.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license and restricted mortgage loan originator endorsement nor for the removal

of any of the conditions, limitations or restrictions of a restricted license and restricted mortgage loan originator endorsement until two years have elapse from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employer broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employer broker has read the Decision of the commissioner which granted the right to a restricted license; and

(b) That the employer broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license or mortgage loan originator endorsement, taken and successful completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license and mortgage loan originator endorsement. If Respondent fails to satisfy this condition the Commissioner may order the suspension of the restricted license and restricted mortgage loan originator endorsement until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

2. Respondent shall pay \$400.25 to the department for the actual costs of the real estate counsel time for the investigation and enforcement of this case, within 60 days of the effective date of this decision.

DATED: March 21, 2013



ADRIENNE J. MILLE
Administrative Law Judge
Office of Administrative Hearings