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BEFORE THE DEPARTMENT OF REAL ESTATE **FILED**

STATE OF CALIFORNIA

OCT - 6 2020

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DEPT. OF REAL ESTATE  
By *[Signature]*

In the Matter of the Accusation of:  HOWARD JEFF EDWARDS,  Respondent.	) ) ) )	DRE No. H-41202 LA  OAH No. 2019111019
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DECISION

The Proposed Decision dated August 12, 2020, 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.

Pursuant to Section 11517 (c) (2) (C) of the Government Code, the following corrections are made:

On caption, Page 1, Respondent's name "Howard J. Edwards" shall read: "Howard Jeff Edwards".

Summary of Decision, Page 3, Paragraph 1, Line 6, "restricted" was worded, but "suspended" was worded in order.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 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 November 5, 2020.

IT IS SO ORDERED 9.24.20.

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

DOUGLAS R. McCAULEY

**BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**HOWARD J. EDWARDS, Respondent**

**Case No. H-41202 LA**

**OAH No. 2019111019**

**PROPOSED DECISION**

Thomas Y. Lucero, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on June 22, 2020.

Diane Lee, Staff Counsel, represented complainant, Chika Sunquist, a Supervising Special Investigator of the State of California. The ALJ took official notice that Ms. Sunquist brought the accusation in her official capacity. Howard J. Edwards, respondent, represented himself.

The record was held open until July 6, 2020 for respondent's submission of documents and until July 13, 2020 for complainant's response. Respondent timely submitted, and there was no objection to, the following documents, marked as indicated and admitted into evidence:

Exhibit M is the declaration of Damon Germanides attesting: (i) that Exhibit H, which was admitted into evidence at the hearing, was Mr. Germanides's character

reference letter; and (ii) that respondent made payments as indicated in Exhibit I, which was likewise admitted into evidence at the hearing.

Exhibit N is the declaration of Brenda Perry with a list of payments to Vladimir Syelsky.

Exhibit O is the declaration of Ian Archibald regarding resolution of litigation between him and respondent.

Exhibit P is the declaration of D. Jay Ritt regarding his character reference letter, which was admitted into evidence as part of Exhibit J.

Exhibit Q is the declaration of respondent about his notes regarding the administrative hearing.

Oral and documentary evidence was received. The matter was submitted for decision on July 13, 2020.

## **STATEMENT OF THE CASE**

The Department of Real Estate (DRE) granted respondent a conditional salesperson license, valid for the two years ending January 18, 2002. DRE then issued respondent a salesperson license (not conditional) from March 2002 through February 7, 2018, when DRE granted him a broker license. On February 13, 2018, respondent applied for a license endorsement as a mortgage loan originator (MLO). Respondent supplemented the application he had used in the past, in which he answered yes to whether civil judgments had been entered against him. Though the application instructed that he should provide details of the judgments, he did not. DRE granted the application without further investigation. DRE seeks to revoke respondent's license

because he did not fulfill the obligation to provide detailed information about the judgements against him.

## **ISSUES**

1. Is respondent's failure to provide required information to DRE grounds to revoke his license?
2. Do circumstances in extenuation of respondent's conduct and his good record show that revocation would be too harsh or otherwise inappropriate?

## **SUMMARY OF DECISION**

In his application for a license endorsement, respondent withheld required information. He misrepresented his financial status, especially regarding outstanding adverse judgments. On the other hand, respondent presented extensive evidence of his good character and responsible business practice. For years respondent has diligently honored his financial commitments and continues to pay down judgment debt. Respondent's license endorsement should be restricted, but revocation of his broker license is not warranted.

## **FACTUAL FINDINGS**

1. Respondent's various licenses since 2000 are set out in a license history certification, Exhibit 3:
  - A. DRE granted respondent a conditional salesperson license on July 18, 2000. It expired on January 18, 2002.

B. Because respondent had not completed the education requirement as of January 19, 2002, his salesperson license was suspended then indefinitely.

C. Respondent completed the education requirement so that, on March 5, 2002, DRE reinstated his salesperson license. The license expired on July 17, 2004.

D. On October 25, 2004, respondent renewed his salesperson license, but respondent then had no employing broker affiliation. Respondent had an employing broker affiliation and activated the license on June 8, 2005.

E. On August 18, 2008, respondent renewed the license and DRE approved his application for, and he obtained, an Individual MLO license endorsement. The MLO license endorsement was inactive as of November 20, 2010.

F. On December 7, 2010, respondent's employment by one broker was discontinued and on December 15, 2010, his license was activated with a different employing broker.

G. On December 30, 2010, respondent's MLO license endorsement was approved.

H. On January 1, 2012, respondent's MLO license endorsement was terminated when he failed to renew it.

I. On January 4, 2012, respondent's MLO license endorsement was again approved.

J. On February 8, 2018, respondent's salesperson license was terminated and DRE issued him a broker license, number B/01292919. The broker license is set to expire on February 7, 2022.

K. Respondent's MLO license endorsement was approved as of March 6, 2018.

### **The 2007 Default Judgment, Now Satisfied**

2. A 2007 default judgment against respondent is documented in Exhibit 4:

A. The August 29, 2007 complaint by individual plaintiff Ian Archibald was filed in the Third Judicial District Court, County of Summit, State of Utah, civil number 070500480 (the Utah action). The named defendants are respondent and Gregory Golden.

B. The complaint alleges Mr. Archibald was to purchase real property in Park City, Utah, by written agreement dated March 1, 2006. On April 10, 2006, Mr. Archibald assigned all his rights in the property to respondent and Mr. Golden for a payment of \$75,000 no later than April 11, 2006. On April 11, 2006, however, respondent and Mr. Archibald agreed to defer payment for two months in exchange for interest payments at 10 percent per year. On April 25, 2006, respondent sold the property. He had paid nothing to Mr. Archibald as of the August 2007 filing of the complaint.

C. The December 3, 2007 default judgment was against both respondent and Mr. Golden. The court awarded plaintiff Archibald these amounts for these types of monies owing: (i) \$75,000, unpaid principal; (ii) \$12,208.28, interest at ten percent per year from April 11, 2006 through November 27, 2007; and (iii) \$274,

court costs. The total of the default judgment is \$84,482.28, plus interest that continued to accrue, plus, on execution of the judgment, reasonable costs and attorney's fees as might be incurred and later determined.

3. Following the sale of the Utah property, respondent did not have the means to repay Mr. Archibald. Asked on cross-examination why not return it, rather than sell the property when he lacked the ability to pay Mr. Archibald, respondent explained that a return offered no remedy. The property was encumbered by debt of approximately \$1 million. The assignment was agreed because Mr. Archibald was unable to close on his purchase of property so encumbered.

4. Respondent provided few details on amounts he paid Mr. Archibald. Citing lack of memory, he stated tentatively he had paid all he owed under the assignment agreement by early 2011. Mr. Golden, on the other hand, has never paid any part of the debt. Respondent stated he paid irregularly, "very piecemeal," toward satisfaction of the default judgment. Respondent stated that in May 2020, he and Mr. Archibald agreed to a settlement, which would satisfy the judgment, including as applicable to Mr. Golden, by compromise. Exhibit D is Mr. Archibald's June 17, 2020 letter stating: "The purpose of this letter is to confirm and acknowledge that the matter [Utah action] has been resolved between [respondent], Greg Golden and myself in full."

### **The 2012 Default Judgment and Continuing Partial Payments**

5. A 2012 default judgment against respondent is documented in Exhibit 5:

A. The complaint filed on December 14, 2012, by plaintiffs Vladimir Syelsky and Lisa Syelsky was filed in the Superior Court of the State of California,



County of Los Angeles (LASC), case number SC115235 (the LASC action). Respondent is the sole named defendant.

B. The complaint in the LASC action alleges that respondent, an employee of CS Financial, Inc. (CS Financial) in the lending business, was delinquent as of September 1, 2011, in making payments on a promissory note, totaling \$398,335, \$392,000 principal and \$6,335 interest. It also alleges that respondent was guilty of fraud and breach of fiduciary duty, inducing plaintiffs to obtain a \$2 million line of credit secured by their residence and misleading them into lending respondent money with no adequate security.

C. The default judgment was filed in the LASC on May 11, 2012, awarding a total of \$455,446.22, which is the sum of: (i) \$430,010 in damages; (ii) \$15,550.92 in prejudgment interest at 10 percent per year; (iii) \$9,490.20 in attorney's fees; and (iv) \$395 in costs.

6. On November 9, 2012, respondent through counsel moved in the LASC action to have the court set aside his default and the default judgment (set-aside motion). Respondent's declaration under penalty of perjury in support of the motion averred that he did not appreciate that he might be liable for fraud or breach of fiduciary duty, believing rather representations by counsel for plaintiffs that the lawsuit was a vehicle to recover money from respondent's former employer, CS Financial. Respondent describes how for years, from the start of the economic downturn in 2007 through 2011, his business was not profitable, he lost property, including his family's residence, to foreclosure, and he suffered emotionally. The declaration, Exhibit 5, page 31, concludes:

Further, I am concerned about requirements to disclose a judgment based upon breach of fiduciary duty and fraud to business associates, lenders, insurance companies, and to the licensing board that governs mortgage originators. By and through the Motion, I plead that this Court relieve me of the effect of my misguided reliance upon . . . statements [by counsel for plaintiffs], which were made to me at a time when I was mentally distressed and fatigued, and otherwise completely vulnerable.

7. According to the LASC minutes, the set-aside motion was granted on March 25, 2013, but plaintiffs successfully appealed. On remand, the LASC scheduled argument on June 16, 2014. Counsel for plaintiffs appeared and argued the motion. No one appeared for respondent. The LASC denied the motion on grounds, among others, that respondent had no meritorious defense to plaintiffs' claim.

8. Counsel for plaintiffs in the LASC action wrote an undated letter, Exhibit G, which states in part:

This letter shall confirm that Mr. Edwards has been repaying paying [*sic*] the outstanding judgment in [the LASC action] out of the commissions he earns as a mortgage broker.

9. On February 13, 2018, respondent attested and submitted to DRE the application, Exhibit 3, for the MLO license endorsement.

A. DRE accessed the application online as part of the Nationwide Mortgage Licensing System & Registry (NMLS), as set out in the declaration, page one of Exhibit 3, of Kristy Rodrigues, a DRE Special Investigator.

B. The "Disclosure Questions" section of the NMLS includes several questions and respondent's answers that are pertinent here.

i. Respondent answered yes to question (A)(3), whether he had been "the subject of a foreclosure action within the past 10 years."

ii. Respondent answered yes to question (D), "Do you have any unsatisfied judgments or liens against you?"

iii. To the other questions, (B), (C), and (E) through (Q), several of which have sub-questions, respondent answered no.

C. The "Disclosure Questions" may be considered a thoroughgoing examination of an applicant's financial status and possible professional malfeasance. For example there are nine sub-questions under question (K), all prefaced with: "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever . . . ." Sub-question (1) completes the question with: "found you to have made a false statement or been dishonest, unfair or unethical?" Respondent's answer was no.

D. Immediately following the "Disclosure Questions" in the NMLS is the section entitled "Disclosure Explanations."

i. Respondent explained question (D) first. Under "Event Explanation Detail (Required)," he wrote: "I had a business transaction where my partner wasn't able to meet his obligations. I agreed to cover the obligation which ended in result of [*sic*] judgment. Financial issues explained on uploaded document."

ii. The uploaded document is respondent's February 25, 2016 letter to Mike Page, Licensing Specialist, Utah Division of Real Estate. The letter

## **Evidence of Good Character and Business Practices**

10. Production at respondent's business declined by approximately 85 percent following the general business downturn in 2007. Respondent cast about for resources during this crisis, going so far as to liquidate his retirement accounts to be able to continue to pay his staff. He has succeeded in keeping his business moving forward.

11. Respondent is the sole financial support for his wife and three children, ages 10, 12, and 14. Respondent pays for a caregiver for his mother, who is diabetic and bed-ridden following several strokes. Respondent provides financial support for his mother-in-law as well, a retired teacher.

12. Respondent contributes to the community with volunteer work. For instance, he helped start a group called Harborview Dads. One of the group's goals is to bring technology to school children. They also organize on-campus assistance from fathers with technical skills. Since 2011, respondent has been a leader in the group, which has hosted successful events on campus to foster a sense of community. Respondent has also been the co-chairperson of a charitable foundation which raised substantial sums to pay for infrastructure and college counseling at a local high school.

13. Exhibit H is a three-page, May 17, 2020 character reference letter from Damon Germanides, Broker of Record, Insignia Mortgage, Inc. (Insignia), in Beverly Hills, California. Mr. Germanides met respondent in 2005 when he started to work at CS Financial. He describes respondent as a hard worker who hopes to do his best for clients. Respondent took time from his own work to help Mr. Germanides succeed. At about the time he left CS Financial in 2010, respondent told Mr. Germanides of his

financial stress, including the foreclosure of his home and efforts to pay judgment debt. Since 2017, when respondent was invited to become an affiliate broker at Insignia Mortgage, a company Mr. Germanides established in 2015, Mr. Germanides has been pleased that respondent has used his experience to great effect and demonstrated integrity in all his dealings. Mr. Germanides added that respondent is devoted and attentive to his three children.

14. Mr. Germanides also wrote a June 17, 2020 letter, Exhibit I, with an accounting of monies garnished from respondent's earnings and paid by Insignia Mortgage to counsel for plaintiffs in the LASC action toward satisfaction of the judgment.

15. D. Jay Ritt's March 25, 2019 character reference letter, included in Exhibit J, likewise notes respondent's hard work and professionalism. Mr. Ritt is an experienced lawyer whom respondent has assisted with several mortgage transactions and lines of credit. He has high praise for respondent's skill and ethics.

16. Louis Cuck is a producer at Nickelodeon Media Company, whose February 10, 2019 character reference letter in Exhibit J describes the excellent service respondent provided in dealing with mortgages for Mr. Cuck in January 2019 and 16 years before.

17. Respondent pointed out that in his decades in the real estate profession, he has never been subject to discipline and none of his clients have lodged a complaint against him.

## Costs

18. As set out in Exhibit 7, DRE incurred in this matter reasonable costs totaling \$2,000.22, the sum of: (i) \$1,016.22 for investigation; and (ii) \$984 for enforcement.

## PRINCIPLES OF LAW

1. Complainant bears the burden of showing by "clear and convincing proof to a reasonable certainty" that license discipline is warranted. (*Ettinger v. Medical Board of Quality Assurance* (1982) 135 Cal.App.3d 853, 855.) Complainant met the burden in this matter.

2. Business and Professions Code section 10166.051, subdivision (b), states:

In addition to any penalties authorized by regulations adopted pursuant to Section 10166.15, the commissioner may do one or more of the following, after appropriate notice and opportunity for hearing: [¶] . . . [¶]

(b) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license endorsement, if an applicant or endorsement holder fails at any time to meet the requirements of Section 10166.05 or 10166.09, or withholds information or makes a material misstatement in an application for a license endorsement or license endorsement renewal.

3. Under Business and Professions Code section 10177, subdivision (a):

The commissioner may suspend or revoke the license of a real estate licensee . . . , who . . . has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for themselves or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

4. Under Business and Professions Code section 10106, subdivision (a), respondent may be ordered "to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

5. The accusation's prayer asks for penalties under Business and Professions Code section 10139. Penalties are not appropriate here, and not at issue. A disciplinary proceeding is not to punish. It affords rather protection to the public by disqualifying dishonest, immoral, disreputable, or incompetent licensees. The purpose of the hearing is thus to maintain public confidence that the profession operates safely and in the public good. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817 [*Fahmy*].)

## **ANALYSIS**

1. The NMLS asked for explanation of respondent's financial difficulties which he did not supply. Respondent knew or should have known he was obligated to provide full details in light of the number and type of questions posed in the NMLS.

2. The Attestation further drove home the point that the applicant, respondent in this case, was to be careful to supply details. The applicant was on notice that information not only at the time of application submission was required, but also later, information that would supplement the NMLS in case of significant post-application developments.

3. The two major judgments against him have had significant bearing on respondent's ability to continue as a real estate professional. The debt not only disrupted respondent's income, but subjected him to stress and negative emotions. At a minimum, then, respondent should have provided details on the courts where these judgments were entered against him and the amount of each judgment.

4. Instead of the required information, respondent provided a two-year old letter. The letter was not only out-of-date by the time it was submitted, it was vague, with virtually no details about pending judgments and liable to be misinterpreted. It included dollar figures, but only relating to minor credit issues.

5. The information was required for a reason, as set out in *Fahmy*, cited above. More pragmatically, the information gives DRE and other regulatory authorities insight into whether an applicant for a license is financially stable, or whether imprudent practices have led or might lead to financial straits, for the applicant who obtains a license and for the prospective customers.

6. This pragmatic inquiry into an applicant's finances and business background is well advised in light of the facts respondent himself presented. Much of his business was severely curtailed and his ability to move forward was damaged by the precipitous financial downturn that started in approximately 2007. The downturn's effects on respondent's business affected respondent's clients adversely. Financial



downturns of the future may be less drastic, but they are inevitable eventually. Financial shocks and surprises, such as the bankruptcy of respondent's business tenant, Talisman, are also to be expected. If respondent's financial stability is revealed to be unlikely to endure a financial downturn, shock, or surprise, it is in the interest of the public that a regulatory agency like DRE is made aware ahead of time.

7. Respondent has now the advantage of hindsight, but his evidence demonstrated that, in the end respondent was able, though at great personal cost, to endure a great deal of adversity. It might be objected that though respondent and his business have endured, costs to his clients, as well as to him, have been considerable. But the evidence does not indicate that any harm to clients might have been avoided had respondent been more forthcoming in the NMLS.

8. Respondent demonstrated good character and ethical practice by striving to protect his clients from losses, keeping his business afloat in difficult circumstances and giving him in the end the ability to repay monies he owed. Respondent's character references supplement this evidence in their emphasis on respondent's hard work and dedication to clients' interests.

### **Cause for Discipline**

9. The question remains whether respondent violated the law despite his well-meaning efforts for the benefit of clients. He did. Respondent withheld information required in the NMLS application for an MLO license endorsement. Respondent thus violated Business and Professions Code section 10166.051, subdivision (b), The evidence was not clear and convincing that respondent violated Business and Professions Code section 10177, subdivision (a). That Code section

prohibits fraud and deceit and intentional wrongdoing. Complainant did not show that respondent intentionally provided inadequate information on the NMLS application.

10. Cause exists for discipline against respondent's license and license rights based on violation of Business and Professions Code section 10166.051, subdivision (b). Any discipline is properly limited, however, given the extenuating circumstances respondent showed, as explained above, as well as the evidence of his good character and diligence in repaying the debt the details of which he failed to disclose in the application.

### **Costs**

11. Respondent may be liable for DRE's reasonable costs in this matter. Respondent's financial difficulties must again be considered, however. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court directed the ALJ and agency to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. It would be unfair if assessing full costs would penalize a respondent who, though found to have committed some misconduct, has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of proposed discipline. DRE must likewise consider a respondent's subjective good faith belief in the merits of respondent's case and whether it raises a colorable challenge. DRE must also consider ability to pay. It may not assess costs disproportionate to misconduct that may be considered relatively innocuous.

12. In these circumstances, adding substantially to respondent's debt would be unduly punitive. Respondent has the ability to reimburse some of DRE's costs. An order that he pay approximately half of the costs, a total of \$1,000, is fair.

## LEGAL CONCLUSION

1. Respondent's should have known that he was obligated to provide DRE information about two adverse judgements, such that his failure to provide the information is grounds for license discipline.

2. Extenuating circumstances and his good record show that license revocation is unduly harsh and unwarranted. A more appropriate remedy is suspension of respondent's MLO license endorsement for six months. For the protection of the public, a suspension of the privilege the MLO endorsement bestows on respondent will impress upon respondent the solemnity of the obligation to provide full information when required by DRE and to check and if necessary re-check that any information he provides DRE is full and complete.

## ORDER

The mortgage loan originator endorsement of the broker license, number B/01292919, of respondent Howard Jeff Edwards, is suspended for six months from the effective date of this decision. Respondent shall reimburse the Department of Real Estate \$1,000 for costs, on such terms as the Department of Real Estate may determine.

DATE: August 12, 2020

DocuSigned by:  
*Thomas Y. Lucero*  
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THOMAS Y. LUCERO

Administrative Law Judge

Office of Administrative Hearings