

**FILED**

**FEB 07 2024**

**DEPT. OF REAL ESTATE**

By— 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of:	)	DRE No. H-07135 SAC
	)	
MELVIN JAMES BURRELL,	)	OAH No. 2023090391
	)	
Respondent.	)	

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DECISION

The Proposed Decision dated November 29, 2023, 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) of the Government Code, the following corrections are made to the Proposed Decision:

Page 10, paragraph 34, "...Department of Insurance..." shall be amended to "...Department of Real Estate..."

The application for a mortgage loan originator endorsement is denied, but the right to a restricted mortgage loan originator endorsement is granted to Respondent.

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.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on FEB 28 2024.

IT IS SO ORDERED 1/16/2024

CHIKA SUNQUIST  
REAL ESTATE COMMISSIONER

  
By: Marcus L. McCarther  
Chief Deputy Real Estate Commissioner

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

**In the Matter of the Statement of Issues Against:**

**MELVIN JAMES BURRELL, Respondent.**

**Agency Case No. H-07135 SAC**

**OAH No. 2023090391**

**PROPOSED DECISION**

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 17, 2023.

Kevin Sun, Staff Counsel, represented Complainant Ruth Corral, a Supervising Special Investigator for the State of California, who brought the Statement of Issues before the Department of Real Estate (Department or DRE) in her official capacity. Martin S. Kovalsky, Attorney at Law, represented respondent, Melvin James Burrell.

This matter is governed by the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, sections 10000 through 11506, and implementing regulations. Each regulation cited below is a section of title 10 of the California Code of Regulations.

Respondent filed a pre-trial brief, marked for identification as Exhibit Z. During the hearing, Complainant moved to amend the Statement of Issues. Respondent

opposed the motion at hearing and the matter was taken under submission. The parties filed briefs concerning amendment. Respondent withdrew his opposition. The Statement of Issues is deemed to allege as grounds for denial of respondent's application all wrongful conduct alleged in the Statement of Issues.

Testimony and documents were received in evidence. The record was held open for the submission of briefs, until October 24, 2023, for an opening brief by Complainant, until October 27, 2023, for opposition by respondent, and until October 31, 2023, for Complainant's reply.

Complainant's Post-Hearing Brief was timely filed on October 24, 2023, and marked Exhibit 12 for identification. Respondent's opposition, Response to Motion to Amend Pleading, was timely filed on October 25, 2023 and marked Exhibit BB for identification. Complainant's Reply Brief was timely filed on October 31, 2023 and marked Exhibit 13 for identification.

On October 24, 2023, respondent filed a Motion to Dismiss pursuant to Public Resources Code Section 21167.4(A); Declaration of Martin S. Kovalsky; Proposed Order, marked for identification as Exhibit AA. On October 25, 2023, Complainant filed opposition to respondent's motion, marked Exhibit 14 for identification. On October 26, 2023, respondent filed a Reply, marked for identification as Exhibit CC, withdrawing the Motion to Dismiss.

The record closed and the matter was submitted for decision on October 31, 2023.

## **STATEMENT OF THE CASE**

A licensed broker, respondent applied for endorsement as a Mortgage Loan Originator (MLO). He contends he mistakenly failed to make mandatory disclosures regarding past license discipline and civil lawsuits against him. The Department contends that together respondent's history of license discipline and failures to disclose are grounds to deny the MLO endorsement.

## **FINDINGS OF FACT**

1. Complainant served the Statement of Issues on July 12, 2023. On a date not in the record, respondent requested a hearing by submitting a Notice of Defense on Application.

### **Licensure**

2. The Department issued respondent a salesperson license on July 14, 1987, and on November 16, 1990, a broker license, number B00963914. The Department has imposed discipline on respondent's broker license as set out in more detail below. Under the Real Estate Law, respondent currently holds license rights under a restricted real estate broker license issued on November 16, 1990 and set to expire on August 2, 2024.

### **Background**

3. Not long after major disruptions in the home mortgage and financing markets in 2007 and 2008, government agencies instituted new rules regulating

mortgage loan originators, such as the SAFE Act, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, codified as 12 U.S.C. 5101 et seq.

4. The SAFE Act required disclosures in response to questions such as those in the MU4, the application form developed by the Nationwide Mortgage Licensing System (NMLS) for individuals, including applicants applying to the California Department of Real Estate, who apply for a license to advise consumers regarding mortgage loans.

5. The Business and Professions Code, sections 10166.01 through 10166.17, adopts standards of the SAFE Act and NMLS, requiring uniform disclosures from real estate professionals nationwide to avoid repeating disruptions like those of the recent past. Required disclosures include an applicant's history of license discipline relating to financial services-related business.

### **August 2013 Accusation**

6. On August 1, 2013, Robin Trujillo, the Deputy Real Estate Commissioner at the time, filed an Accusation in case number H-38980 LA, against: (i) respondent, individually and as designated officer of Capital Executive Realty Inc. (CERI); and (ii) CERI, doing business as ERA Capital Executive Realty.

7. The 2013 Accusation stated in its First Cause for Discipline that from CERI's inception on March 21, 2003, respondent was responsible for its compliance with the Real Estate Law because, under Business and Professions Code section 10159.2, he was its designated broker and officer.

8. Respondent and Rochelle Janet Burrell, his wife at that time, now his ex-wife since dissolution of the marriage, owned CERI equally. Respondent was CERI's

chief executive officer, but delegated his duties to supervise and manage CERI to his wife, a licensed salesperson and accountant, who was CERI's chief financial officer.

9. Within the meaning of Business and Professions Code section 10131, subdivision (a), respondent and CERI engaged in the business of a residential resale brokerage and acted in the capacity of, advertised, or assumed to act as a real estate broker including the solicitation and negotiation of the sale of real property as the agent of others.

10. CERI also conducted broker-controlled escrows through its escrow division, Capital Executive Realty Inc. doing business as CER Escrow Division Trust Account, under the exemption for real estate brokers in Financial Code section 17006, subdivision (a)(4). CERI's escrow services were incidental to real estate transactions that involved the broker as a party to the transaction and the broker performed acts requiring a real estate license.

11. On January 24, 2013, the Department, then called the Bureau of Real Estate, completed an audit, Audit Report LA120002, that examined CERI's books and records pertaining only to the broker-controlled escrow activities requiring a real estate license. The audit period was January 1, 2010, through June 30, 2012.

12. During the audit period, respondent and CERI were entrusted with funds, including funds in trust from or on behalf of actual or prospective parties to real estate transactions and escrows controlled by CERI. Respondent and CERI deposited the funds in: Trust Account 1 (TA 1) at Comerica Bank, Torrance, California, account number ending in 6489; and Trust Account 2 (TA 2) at US Bank, Saint Paul, Minnesota, account number ending in 5754.

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13. Respondent and CERI permitted, allowed, or caused the disbursement of trust funds from TA 1 that, as of June 30, 2012, reduced the total of aggregate funds in TA 1 to \$31,388.33 less than the existing aggregate trust fund liability to every principal who was an owner of the funds. Respondent and CERI caused this deficiency in TA 1 without obtaining the prior written consent of the owners of the funds and thus violated Business and Professions Code section 10145 and Regulations 2832.1, 2950, subdivision (g), and 2951.

14. As of July 26, 2012, respondent and CERI had partially corrected an escrow account, number 507-BG, by depositing \$29,209.08, leaving it deficient by \$2,179.25 instead of \$31,388.33.

15. Respondent and CERI failed to maintain a separate record for each beneficiary or transaction for TA 1 and TA 2, in violation of Business and Professions Code section 10145 and Regulations 2831.1, 2950, subdivision (d), and 2951.

16. Respondent and CERI failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by TA 1 and TA 2, in violation of Business and Professions Code section 10145 and Regulations 2831.2, 2950, subdivision (d), and 2951.

17. Respondent and CERI failed to maintain a control record in the form of a columnar record in chronological order for TA 1 and TA 2, in violation of Business and Professions Code section 10145 and Regulations 2831, 2950, subdivision (d), and 2951.

18. Respondent and CERI permitted Rochelle Janet Burrell, a real estate salesperson not licensed under CERI, and Lee Owens, escrow officer, an unlicensed and



unbonded person, to be authorized signatories on TA 1 and TA 2, in violation of Business and Professions Code section 10145 and Regulation 2834, subdivision (a).

19. Respondent failed to exercise reasonable control and supervision over the activities conducted by CERI's employees or licensees as necessary to secure full compliance with the Real Estate Law, especially in regard to trust fund handling for broker-controlled escrows, as required under Business and Professions Code section 10159.2 and Regulation 2725, in violation of Business and Professions Code section 10177, subdivision (h).

20. The 2013 Accusation stated that the violations above constituted cause for discipline of the real estate licenses and license rights of CERI and respondent under Business and Professions Code section 10177, subdivisions (d), (g), and (h).

21. The 2013 Accusation stated in its Second Cause for Discipline that on February 26, 2002, CERI had been suspended by the California Secretary of State for nonpayment of Franchise Tax Fees, in violation of Business and Professions Code section 10177, subdivision (d), and Regulation 2742, subdivision (c).

22. The 2013 Accusation stated in its Third Cause for Discipline that the overall conduct of CERI and respondent constituted negligence that was cause for discipline of the real estate license and license rights of each under Business and Professions Code section 10177, subdivision (g).

23. The 2013 Accusation stated in its Fourth Cause for Discipline that the conduct, acts, and omissions of CERI and respondent constituted a breach of fiduciary duty owed to CERI's clients and trust fund beneficiaries of good faith, trust, confidence, and candor, within the scope of their contractual and escrow relationship, in violation of Business and Professions Code section 10177, subdivision (g), and

constituted cause for discipline of the real estate license and license rights of each under the Code section.

24. The 2013 Accusation stated in its Fifth Cause for Discipline that respondent's overall conduct constituted his failure, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of CERI required under Business and Professions Code section 10159.2 and Regulation 2725, and to keep CERI in compliance with the Real Estate Law, all cause for discipline of the license and license rights of respondent and CERI under Business and Professions Code sections 10177, subdivisions (d), (g), and (h).

25. The 2013 Accusation sought reimbursement of the Department's costs.

## **2014 Stipulation**

26. On December 20, 2014, respondent, individually and on behalf of CERI, signed a stipulation (2014 Stipulation).

27. The 2014 Stipulation stated, Exhibit 6, page A63, that respondent and CERI chose "not to contest the . . . allegations" of the 2013 Accusation, . . . "understand[ing] that, as a result . . . , [the] allegations, without being admitted or denied, would serve as a prima facie basis for . . . disciplinary action."

28. Under the 2014 Stipulation, respondent and CERI agreed to reimburse the Department \$4,751.50 for costs.

29. The 2014 Stipulation stated, Exhibit 6, page A65, lines 8 to 14, that: "The conduct of [CERI and respondent] as described in [the 2013 Accusation], is in violation of [Business and Professions] Code Section 10145(a) and [Regulations] 2832.1, 2831, 2831.1, 2831.2, 2834(a) and 2959(g) . . . and is a basis for suspension or revocation of

[the] . . . license and license rights [of each] as a violation of the Real Estate Law pursuant to [Business and Professions] Code Section 10177(d)."

30. The 2014 Stipulation stated, Exhibit 6, page A65, lines 16 to 21, that: "The conduct of [CERI and respondent] as described in [the 2013 Accusation], . . . constitutes a failure to supervise and to keep [CERI] in compliance with the Real Estate Law during the time that . . . Respondent was the officer designated by a corporate broker licensee, in violation of [Business and Professions] Code Section 10159.2 and Regulation 2725 and is a basis for suspension or revocation of Respondent's license and license rights as a violation of the Real Estate Law pursuant to Code Section 10177(h)."

31. In accordance with the 2014 Stipulation, the Real Estate Commissioner suspended the licenses and license rights of respondent and CERI for 60 days effective February 11, 2015, except that the first 30 days of the suspensions could be stayed for two years if respondent or CERI paid monetary penalties of \$66.67 per day of the suspension.

32. The remaining portion of the suspensions were stayed for two years with probationary conditions, including evidence that \$2,179.25 was restored to TA 1 and violations of laws and regulations cited in the 2013 Accusation were corrected before February 11, 2015.

33. The Real Estate Commissioner also ordered respondent and CERI to reimburse the Department \$4,751.50 for costs as stipulated.

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## **2018 Accusation**

34. On December 7, 2018, Maria Suarez, in her official capacity as a Supervising Special Investigator for Department of Insurance, filed an Accusation in case number H-41246 LA, against: (i) respondent, individually and as designated officer of Regal Service Group (RSG); and (ii) RSG.

35. RSG and respondent allegedly acted as real estate brokers within the meaning of Business and Professions Code section 10131(a), including the solicitation for listings of and the negotiation of the purchase and sale of real property as the agent of others for or in expectation of compensation and the conducting of broker-controlled escrow activities under Financial Code section 17006, subdivision (a)(4).

36. The activities of RSG and respondent also allegedly included soliciting borrowers or lenders and negotiating loans as well as collecting payments and other services for borrowers or lenders in connection with loans secured by liens on real property, all within the meaning of Business and Professions Code section 10131, subdivision (d).

37. The 2018 Accusation stated that the Department licensed RSG as a corporate real estate broker, with respondent as its designated officer, effective September 9, 2011.

38. The 2018 Accusation sought reimbursement of costs from respondent and RSG.

## **2018 AUDIT OF RESPONDENT**

39. On August 23, 2018, the Department completed an audit of respondent's books and records for the period February 11, 2015, through January 31, 2018. The

resulting report, Audit Report LA170128, described various violations of the Real Estate Law.

40. Audit Report LA170128 stated that respondent accepted or received funds, some to be held in trust, that he deposited and disbursed trust funds during the audit period, using an account, B/A1, at Comerica Bank, Torrance, California, though B/A1 was not designated a trust account.

41. Audit Report LA170128 described respondent's mishandling matters pertinent to B/A1, as set out in the following 12 paragraphs.

42. Audit Report LA170128 stated respondent reduced trust funds to an amount on January 31, 2018, that was \$5,721.51 less than then existing aggregate trust fund liability to the owners of the funds, without first obtaining their prior written consent, in violation of Business and Professions Code section 10145, and Regulations 2832.1, 2950, subdivision (g), and 2951.

43. Audit Report LA170128 stated respondent permitted the Franchise Tax Board without authorization to disburse from B/A 1 \$660 in trust funds, in violation of Business and Professions Code sections 10145 and 10176, subdivision (i).

44. Audit Report LA170128 stated respondent performed escrows for sales and loan transactions though not representing any party in the transactions, in violation of Financial Code section 17006, subdivisions (a)(4) and (d).

45. Audit Report LA170128 stated respondent performed broker-controlled escrows in the name of expired corporate real estate broker Capital Executive Realty Inc., in violation of Business and Professions Code sections 10130 and 10159.5 and Regulation 2731.

46. Audit Report LA170128 stated respondent failed to place funds collected for the benefit of another into a trust fund in the name of the broker and failed to deposit such funds within one day of receipt, in violation of Business and Professions Code section 10145 and Regulations 2832, 2950, subdivision (f), and 2951.

47. Audit Report LA170128 stated respondent failed to maintain an accurate control record of the receipt and disbursement of trust funds, in violation of Business and Professions Code section 10145 and Regulations 2831, 2950, subdivision (d), and 2951.

48. Audit Report LA170128 stated respondent failed to maintain a separate record of the receipt and disbursement of trust funds, in violation of Business and Professions Code section 10145 and Regulations 2831.1, 2950, subdivision (d), and 2951.

49. Audit Report LA170128 stated respondent failed to perform and maintain a monthly reconciliation of the separate record to the control record of trust funds, in violation of Business and Professions Code section 10145 and Regulations 2831.2, 2950, subdivision (d), and 2951.

50. Audit Report LA170128 stated respondent failed to submit the Escrow Activity Report, Form RE 890, within 60 days of the end of calendar years 2015 and 2016, in violation of Business and Professions Code section 10141.6.

51. Audit Report LA170128 stated respondent failed to disclose to all parties involved in real estate transactions that respondent had an interest as an owner in the escrow holder, in violation of Regulation 2950, subdivision (h).

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52. Audit Report LA170128 stated respondent failed to immediately notify the Department that four of respondent's licensed employees transferred to be employees of RSG, in violation of Business and Professions Code section 10161.8 and Regulation 2752.

53. Audit Report LA170128 stated respondent failed to exercise reasonable supervision over the activities of his employees, to ensure compliance with the Real Estate Law and with Regulations, in violation of Business and Professions Code section 10177, subdivision (h) and Regulation 2725.

### **2018 AUDIT OF RSG**

54. The Department completed an audit of RSG's books and records on August 23, 2018. This audit was for the period February 11, 2015, through February 28, 2018. The resulting report, Audit Report LA170169, described various violations of the Real Estate Law.

55. Audit Report LA170169 stated that RSG, in failing to immediately notify the Department that the employment of four licensed employees was transferred from respondent to RSG, violated Business and Professions Code section 10161.8 and Regulation 2752.

56. Audit Report LA170169 stated that RSG used the expired fictitious business name "Leacrest Realty" and the unlicensed fictitious business name "Capital Executive Realty" to conduct real estate activities in violation of Business and Professions Code section 10159.5 and Regulation 2731.

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## **2020 Stipulation**

57. On May 25, 2020, respondent, individually and as Designated Officer of RSG, signed a stipulation (2020 Stipulation) to settle the issues in the 2018 Accusation.

58. As stated in the 2020 Stipulation, Exhibit 8, page A86, respondent agreed: (i) that he and RSG had violated provisions of the Real Estate Law and implementing regulations as listed above; and (ii) that the violations were bases for the suspension or revocation of his and RSG's licenses and license rights pursuant to Business and Professions Code sections 10177, subdivision (d), 10177, subdivision (g), and, with respect to respondent only, 10177, subdivision (h).

59. Respondent and RSG agreed that they were to be issued restricted licenses for two years and were required to fulfill conditions, such as respondent's passing a Professional Responsibility Examination and the licenses of respondent and RSG would be suspended until the conditions were fulfilled.

60. Another probationary condition was that respondent and RSG must reimburse the Department for the cost of investigation and enforcement. Respondent agreed he and RSG, jointly and severally, would pay the Department \$2,014.

61. A further probationary condition was that respondent and RSG must reimburse the Department for audit costs. Respondent agreed he and RSG would pay, pursuant to Business and Professions Code section 10148, \$6,918.76 for the original 2018 audit of respondent, or as much as \$8,648.45 if a follow-up audit of respondent was done, and \$3,571.34 for the original 2018 audit of RSG, or as much as \$4,464.18 if a follow-up audit of RSG was done.

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62. The Real Estate Commissioner adopted the 2020 Stipulation by order effective on August 3, 2020.

### **September 8, 2021 MU4**

63. On September 8, 2021, respondent submitted the NMLS MU4 application form when he applied for an MLO endorsement.

64. In section (K), page A43 of Exhibit 3, the September 8, 2021 MU4 asked:

Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever: [ ] . . . [ ]

(2) found you to have been involved in a violation of a financial services-related business regulations(s) or statute(s)?

(3) found you to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked or restricted?

(4) entered an order against you in connection with a financial services-related activity? [ ] . . . [ ]

(6) denied or suspended your registration or license or application for licensure, disciplined you, or otherwise by order, prevented you from associating with a financial services-related business or restricted your activities?

[ ] . . . [ ]

(9) entered an order concerning you in connection with any license or registration?

To each of these questions, (K)(2), (3), (4), (6), and (9), respondent answered no.

65. To complete the MU4, respondent submitted an attestation, Exhibit 3, page A44, required of all applicants, that stated in part:

I Melvin James Burrell (350693), (Applicant) on this date Wednesday, September 8, 2021 swear (or affirm) that I executed this application on my own behalf, that I am attesting to and submitting this application, and that I agree to and represent the following:

(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; [¶] . . . [¶]

(4) To keep the information contained in this form current and to file accurate supplementary information on a timely basis; and

(5) To comply with the provisions of law, including the maintenance of accurate books and records, pertaining to the conduct of business for which I am applying.

If the Applicant has knowingly made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied.

I verify that I am the named person above and agree to the language as stated.

### **Investigation by Department**

66. For a little more than two years, the Department has employed Special Investigator (SI) Trevor Gonzalez in the Mortgage Loan Activities Unit. His primary duties are to collect, analyze, and submit evidence to his manager regarding licensees' activities pertinent to mortgage loans. SI Gonzalez answers questions by telephone from the public. With a caseload of approximately 30 per month, he works on cases, most involving MLO endorsement applications.

67. The Department assigned SI Gonzalez to investigate respondent's September 8, 2021 MU4. After asking about sections (K) and (M), SI Gonzalez asked respondent to complete an Interview Information Statement, RE Form 515 (Rev. 7/18) and Civil Litigation Detail Reports, RE Form 515E (Rev. 7/18). Respondent submitted an Interview Information Statement dated November 23, 2021, and three Civil Litigation Detail Reports, one dated November 29, 2021, two dated November 30, 2021.

68. Respondent submitted his declaration dated November 30, 2021, attaching a copy of an MU4 showing that he was now answering yes to questions K(2), K(3), and K(4), whereas he had answered no to these questions in his September 8, 2021 MU4. SI Gonzalez believes that in revising the computerized application,

respondent omitted the "save" command, so that the NMLS website did not display the MU4 as revised, only the old September 8, 2021 MU4.

69. SI Gonzalez stated the Department awaited the result of litigation against respondent, the Dow Litigation, described below, before deciding whether to issue an MLO endorsement. SI Gonzalez agreed that, based on his review of filings in the Dow Litigation, respondent was completely vindicated. Checking such litigation was one way for the Department to investigate whether respondent's conduct had led to the harm of any consumers. SI Gonzalez did not know whether the Department waited for the result of other litigation against respondent or whether respondent had harmed consumers.

70. SI Gonzalez and the Department reviewed respondent's credit report as one possible index of fitness and financial stability. It found his credit good. Another factor that might favor issuing respondent an MLO endorsement was his experience in the mortgage loan field if, during that 20-year period before the SAFE Act became law, there were no consumer complaints. SI Gonzalez believed the disciplinary actions against respondent during that period cancelled any favorable effect.

### **Other November 2021 Disclosures**

71. Respondent's Civil Litigation Detail Reports disclosed pending litigation, including a case entitled *Andrew Dow, individual, Plaintiff, v. Tonette Wright (a.k.a. Tonette Wright-Hayes), individual; Melvin James Burrell, individual; Capital Executive Realty, Inc., a California Corporation; Lea Crest Realty, an expired California Corporation; Regal Services Group, a California Corporation; & Does 1-10, Defendants*, in the Los Angeles Superior Court (LASC), case number 19CHCV00604 (Dow litigation). Respondent explained on page A98 of Exhibit 9:

I listed .on the MLS that it was an approved short sale, it was approved and I showed proof that it was. [Plaintiffs] then said that my escrow license had expired, when I did the research and confirmed that information, I refunded them their escrow fees.

Asked whether he had disclosed the Dow litigation in his MU4, respondent wrote no and explained, Exhibit 9, page A99, "I didn't understand the question, I have since changed my response."

### **January 2022 MU4**

72. After further discussion with SI Gonzalez, respondent submitted a revised MU4 on January 14, 2022, showing respondent answered yes to questions (K)(2), (3), and (4), and (M), but again answered no to questions K(6) and K(9).

### **Resolution of the Dow Litigation**

73. On January 3, 2023, the Judgment After Court Trial and Statement of Decision were filed in LASC, case number 19CHCV00604. The judgment stated plaintiff was to recover nothing and respondent, RSG, and Capital Executive Realty, Inc. were to recover costs. The Statement of Decision. Exhibit F, pages B42 and B43, stated:

Plaintiff failed to meet his burden that the alleged contract was breached. He failed to meet his burden that he was damaged. And as discussed above, plaintiff failed to meet his burden of proving that [respondent] was liable for breach of contract as a co-seller, joint venturer or partner with seller.

74. The plaintiff in LASC case number 19CHCV00604, appealed the adverse judgment. On September 25, 2023, a dismissal of the appeal was filed.

75. On March 28, 2023, the court in LASC case number 19CHCV00604 awarded \$219,550 in attorney's fees to respondent, RSG, and Capital Executive Realty, Inc.

76. On June 1, 2023, respondent recorded an Abstract of Judgment in LASC, case number 19CHCV00604.

### **Respondent's Evidence**

77. Respondent explained there was no discipline against his license during his 20 years of MLO experience before the SAFE Act went into effect.

78. Respondent at one time held a securities license and still holds an insurance license. Respondent realizes now he misread the MU4 questions regarding license discipline. His mind immediately went to his securities and insurance licenses and so he answered no, that there had been no disciplinary action against these licenses.

79. SI Gonzalez informed respondent he had "missed something," given that the Department was aware of his license discipline. Respondent agreed, saying he had "just misread the question." He understood the phrase, financial services-related business, to mean securities and insurance. He was not trying to hide his disciplinary history and so he "disclosed all" to SI Gonzalez in their telephone conversation.

80. Respondent then disclosed all such information in the RE 515 and 515E forms SI Gonzalez asked him to complete. Afterwards they regularly spoke by telephone, at least monthly, respondent asking after the status of his MU4, SI Gonzalez

advising it was under investigation. These contacts continued after respondent submitted his revised MU4 in January 2022. He learned that the Department was awaiting the outcome of the Dow Litigation.

81. While the Dow Litigation went unresolved, another civil case was being litigated against him and, in the spirit of full disclosure, respondent advised SI Gonzalez of that case too. As happened in the Dow Litigation, the outcome, in June 2023, was entirely in respondent's favor. He paid nothing and in fact won costs.

82. Respondent's counsel, Mr. Kovalsky, testified that the judgment in respondent's favor in the Dow Litigation is likely collectible, as Andrew Dow, the plaintiff, is a physician and psychologist who works for a public corporation that pays him a yearly salary of \$336,436.

## **LEGAL CONCLUSIONS**

1. Complainant presented a prima facie case based regarding respondent's failures to disclose required information. It is then respondent's burden under Evidence Code sections 115 and 500 to demonstrate by a preponderance of the evidence circumstances and good character which would warrant issuing him an MLO endorsement.

2. Business and Professions Code section 10166.04 provides in part:

(a) In connection with an application to the commissioner for a license endorsement as a mortgage loan originator, every applicant shall furnish to the Nationwide Multistate

Licensing System and Registry information concerning the applicant's identity, including the following: [¶] . . . [¶]

(2) Personal history and experience in a form prescribed by the Nationwide Multistate Licensing System and Registry, including the submission of authorization for the Nationwide Multistate Licensing System and Registry and the commissioner to obtain both of the following:

(A) An independent credit report from a consumer reporting agency.

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

3. Business and Professions Code section 10166.05 provides:

Notwithstanding any other provision of law, the commissioner shall not issue a license endorsement to act as a mortgage loan originator to an applicant unless the commissioner makes . . . the following findings: [¶] . . . [¶]

(c) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the article.

4. Business and Professions Code section 10166.051 provides in part:



[T]he commissioner may do one or more of the following, after appropriate notice and opportunity for hearing:

(a) Deny, suspend, revoke, restrict, or decline to renew a mortgage loan originator license endorsement for a violation of this article, or any rules or regulations adopted hereunder.

(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 . . . withholds information or makes a material misstatement in an application for a license endorsement or license endorsement renewal.

(c) Issue orders or directives to licensees who hold mortgage loan originator license endorsements, as follows:

(1) Order or direct persons subject to this article to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.

(2) Order or direct persons subject to this article to cease any harmful activities or violations of this article, including immediate temporary orders to desist and refrain.

(3) Enter immediate temporary orders to cease business under a license endorsement if the commissioner

determines that the license endorsement was erroneously granted or the endorsement holder is currently in violation of this article.

(4) Order or direct any other affirmative action the commissioner deems necessary.

5. Under Regulation 2910, subdivision (c):

The nature and gravity of the offense, the number of years that have elapsed since the date of the offense, and the nature and duties of a real estate licensee shall be taken into consideration when determining whether to deem an offense to be substantially related to the qualifications, functions or duties of a licensee. The Department's consideration of these factors in assessing the substantial relationship of an offense does not alter, or act in place of, consideration of these same factors in the Criteria for Rehabilitation.

6. Regulation 2945 provides in part:

(a) Where a real estate licensee was subject to a real estate license discipline action filed by the Bureau prior to January 1, 2010, resulting in discipline in the form of a revocation and/or suspension, such discipline in itself shall not be the sole basis to deny the issuance of a mortgage loan originator license endorsement.

(b) Where a real estate licensee was subject to a real estate license discipline action filed by the Bureau on January 1, 2010, or later, resulting in a revocation, a suspension, a voluntary surrender of a real estate license, a public reproof, and/or a bar order, such discipline alone may be cause for denial of a subsequent mortgage loan originator license endorsement.

## **ANALYSIS**

7. Respondent had much information pertinent to his MU4 in November 2021. There were two instances of discipline of his real estate broker license. In each case, the proceedings were initiated by an Accusation with multiple allegations of wrongdoing. Resolution of these disciplinary proceedings lasted years. Respondent must in consequence have remembered the disciplinary proceedings and their resolution well and in considerable detail.

8. The 2013 Accusation was filed in August of that year and the proceedings were not resolved until a disciplinary order effective in February 2015. The 2018 Accusation was filed in December of that year and, after audits that covered years of practice by respondent and entities he controlled, the proceedings were not resolved until a disciplinary order effective in August 2020. Even then, the Department noted it might perform follow-up audits of the records of respondent and his controlled entities.

9. Respondent was required to disclose all information regarding discipline of his license in his November 2021 MU4, but he failed to do so. He could not credibly claim that he had forgotten the information, concerning as it did many events over a

long period. Respondent claimed instead that he misread or misinterpreted what was asked of him and did not consider his licensed real estate activities as financial services-related, and so he thought mistakenly that discipline of his real estate license was not the subject of inquiry.

10. Respondent's misinterpretation of the questions in Section (K) of the MU4 was, at very least, quite careless, even unthinking. As a licensee with decades of experience, including in the handling of large sums of money, even a little reflection should have caused respondent to understand that the real estate profession is thoroughly financial services-related. Real estate transactions often involve transfers of large sums, in the tens and hundreds of thousands of dollars or more.

11. Moreover, the misdeeds by respondent that resulted in the Real Estate Commissioner's disciplinary orders in 2015 and 2020 were serious, involving, among other things, misallocating funds belonging to respondent's real estate clients. The seriousness and the long duration of his misconduct suggests that respondent had incentive not to disclose facts, the better to prevent or mislead investigation and thus enhance the prospect of his obtaining an MLO endorsement.

12. Respondent's testimony and demeanor during the hearing urge a different conclusion, however: not that he was tempted to or tried to mislead, but rather that he was careless. Respondent did not try to defend his mistake in reading the questions in the MU4. He was open and conciliatory in tone as he answered questions at the hearing.

13. Respondent was the more believable in light of the close cooperation he showed once SI Gonzalez contacted him in late 2021. He fully disclosed all pertinent

facts in writing to the Department once he was informed that his MU4 was deficient, and beyond that, respondent regularly communicated with SI Gonzalez by telephone.

14. Unfortunately for his effort to apply for the MLO endorsement, but fortunately, so to speak, for respondent's credibility, he was careless again. Respondent's MU4 as revised in November 2021 did not appear on the NMLS website. It cannot be concluded that this was wholly respondent's fault, but respondent was again careless in not reviewing the information he provided to make certain that information in his application was not incomplete or misleading as before.

15. In addition to this carelessness, because of the discipline imposed by the Real Estate Commissioner against respondent's licensure in 2015 and 2020, respondent should have answered yes to the MU4 questions (K)(6) and (9). A more careful broker would have done so.

16. The record of discipline of respondent's real estate license only reinforces the conclusion that respondent has a tendency to be less exacting in the preparation of paperwork and in transacting of real estate business than is good for a real estate professional. In allowing his ex-wife to conduct licensed activities, for instance, respondent's misconduct was primarily careless and mostly not deliberate, a failure to supervise or to check up on the work of others, though that is a broker's duty.

17. In respondent's favor here, moreover, is that he worked as an MLO without complaints from consumers and without harm for about 20 years before the SAFE Act took effect. As he also pointed out, respondent is not only financially stable, but likely to be better off financially after being exonerated in the Dow Litigation with an award of fees and costs.

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18. The instances of discipline imposed on respondent's license in 2015 and 2020 are each grounds to deny his application for an MLO endorsement, as set out in Regulation 2945, subdivision (b). The misconduct that led to the 2020 disciplinary order causes concern because it is relatively recent and respondent's license is still on probation under the 2020 disciplinary order.

19. The most recent misconduct that led to license discipline was, however, mostly of a technical nature, matters of mistakes in keeping books and records. The misconduct was distressingly varied, but the record does not show that any of respondent's clients were harmed by the misconduct. It was not shown to be deceitful or dishonest.

20. The older misconduct that led to the 2015 disciplinary order was somewhat different. Again, there were technical violations of the law concerning books and records. But the evidence also indicates that fiduciary duties to clients were breached. Respondent, however, did not agree that any specific wrongdoing occurred, stating only that there was a prima facie basis for disciplinary action.

21. In any event, the evidence indicates that respondent's primary failing leading to the 2015 order was negligence in supervising others, not active wrongdoing of his own.

22. There is cause to deny respondent's application for an MLO endorsement under Business and Professions Code sections 10166.051, subdivision (b), and 10166.05, subdivision (c), and Regulation 2945. Respondent's carelessness of different types, including his past failures to supervise, derogates from the attention to detail that MLO work requires. On balance, however, the evidence shows that respondent is not of bad character, not dishonest or an active participant in wrongdoing, and he was

not, at any point in the process of applying for the MLO endorsement, deceptive or harboring bad intent.

23. For the protection of the public and to encourage attention to detail, a probationary MLO endorsement should be granted respondent. Otherwise, respondent demonstrated that applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that as a mortgage loan originator he will operate honestly, fairly, and efficiently within the purposes of the law.

### **ORDER**

The application by respondent Melvin James Burrell, as documented in his January 2022 MU4, for endorsement of his broker license, number B00963914, to authorize his acting as a mortgage loan originator is denied, provided, however, a restricted mortgage loan originator license endorsement shall be issued to respondent under Business and Professions Code section 10156.5 if respondent pays the Department of Real Estate the appropriate fee for the restricted endorsement within 90 days from the effective date of this Decision.

1. Respondent shall not be eligible to apply for the issuance of an unrestricted mortgage loan originator license endorsement nor for the removal of any of the conditions, limitations, or restrictions of a restricted mortgage loan originator license endorsement until three years have elapsed from the effective date of this Decision.

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2. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate Order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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 this restricted mortgage loan originator license endorsement.

3. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted mortgage loan originator license endorsement is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

4. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which respondent engaged during the period covered by the report.

DATE: **11/29/2023**

*Thomas Lucero*

THOMAS LUCERO

Administrative Law Judge

Office of Administrative Hearings