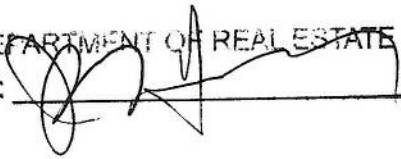


FILED

DEPARTMENT OF REAL ESTATE

OCT 04 2012

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: 

In the Matter of the Accusation of)	No. H-37846 LA
)	
MICHAEL DELANEY,)	OAH No. 2012040002
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated September 5, 2012, 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 correction is made:

Order, page 4, "DATED: September 5, 2011" is amended to read "DATED: September 5, 2012".

This Decision shall become effective at 12 o'clock noon on
OCT 23 2012.

IT IS SO ORDERED 9/21/2012
Real Estate Commissioner


By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

Michael Delaney,

Respondent.

Case No. H-37846 LA

OAH No. 2012040002

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 7, 2012.

Cheryl D. Keily, Staff Counsel, represented Complainant Sylvia Yrigollen, Deputy Real Estate Commissioner in the Department of Real Estate (Department).

Respondent Michael Delaney represented himself.

At the hearing, page 3, line 4 of the Accusation was amended to cite Business and Professions Code section 10166.05, subdivision (b)(1) instead of section 10166.05, subdivision (b)(2). Oral and documentary evidence was received and the matter was submitted August 7, 2012.

The Department of Real Estate brings this Accusation to revoke respondent's mortgage loan originator license endorsement. For the reasons stated below, the endorsement is revoked.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued this Accusation in her official capacity.
2. Respondent has been licensed as real estate broker since February 22, 1985. Since December 28, 2010 he has held a mortgage loan originator license endorsement. On February 9, 2012, the Department brought this Accusation to revoke respondent's mortgage loan originator license endorsement, and respondent timely requested a hearing.

Criminal Conviction

3. On February 15, 1972, in the United States District Court for the District of New Jersey, criminal case number 78-71, a jury convicted respondent of submitting fraudulent documents to induce the Department of Housing and Urban Development to insure a loan in violation of Title 18, Sections 2 and 1010 of the United States Code, and of conspiring to commit those acts in violation of Title 18, Section 371 of the United States Code, all felonies. Respondent and his associates inflated loan applicants' incomes and fabricated employment verifications. He was sentenced to six months in prison and an additional 30 months on probation, and fined \$2,000. Respondent has not received a pardon for this conviction, and it has not been expunged.

Rehabilitation and Mitigation

4. Respondent paid the fine and served four months and 17 days in prison before being released on probation on March 19, 1973. He completed probation in January 1975. A February 8, 1980 letter from John L. Costley, Chief United States Probation Officer for the Probation Office of the District of New Jersey, to the Chief of the New Jersey Insurance Department's License Division, certified that "Mr. Delaney has achieved a degree of rehabilitation indicating that his engaging in a licensed employment would not be incompatible with welfare of society."¹

5. Respondent has no history of illegal conduct since 1972. He has held real estate licenses since the early 1980's. He now holds real estate licenses and mortgage loan originator endorsements in California, Florida, Hawaii, Illinois, Nevada, New York and Oregon, and holds an endorsement as an "HUD/FHA mortgagee," which facilitates insurance for loans.

LEGAL CONCLUSIONS

1. Cause exists to revoke respondent's license under Business and Professions Code² section 10166.05, subdivision (b)(1) and section 10166.051, subdivision (b), as alleged in paragraph 5 of the Accusation. Section 10166.05, subdivision (b)(2), enacted in 2009, requires that the Department deny an application for a mortgage loan originator endorsement unless the applicant has never been convicted of a felony at "any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money

¹ Costley's letter erroneously says that respondent completed probation, rather than beginning it, on March 19, 1973. Court documents confirm the dates set out in Factual Finding 4.

² Further statutory references are to the Business and Professions Code unless otherwise stated.

laundering.” This statute is substantially identical to a 2008 federal statute, Title 12 United States Code section 5104(b)(1)(B). A regulation promulgated by the Department makes it clear that this is a lifetime ban, and an absolute one: “A felony conviction at any time in the applicant's personal history where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering is cause for denial of the application. These restrictions constitute a ban on the real estate licensee's ability to apply for a license endorsement. These restrictions are not subject to mitigation or rehabilitation.”³ (Cal. Code Regs. tit. 10, § 2945.3.) Business and Professions Code section 10166.05, subdivision (b) provides that the Department may “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.” Section 10166.09, subdivision (a) provides that to meet the “minimum standards” for renewal of a mortgage loan originator endorsement, the mortgage loan originator must continue “to meet the minimum standards for obtaining an endorsement as a mortgage loan originator.” Respondent committed a felony involving dishonesty and fraud. (Factual Finding 3.)⁴ Therefore section 10166.05, subdivision (b)(2) would require the Department to deny a mortgage loan originator endorsement to him if he applied for it, but does not specifically require the Department to revoke an endorsement it has already issued. Section 10166.05, subdivision (b) *allows* the Department to revoke his endorsement, but does not *require* revocation. Section 10166.09, subdivision (a) does not require the Department to revoke his endorsement, but does require the Department to deny renewal of his endorsement.

2. Respondent is apparently a fully rehabilitated, responsible real estate professional (Factual Findings 4 and 5), and the Department has accepted his rehabilitation as a fact by issuing and renewing his licenses for 27 years (Factual Finding 2). But for the very specific purposes of a mortgage loan originator license endorsement, rehabilitation cannot be considered, and his long and otherwise unblemished career does not count in mitigation. While the statutes seem to provide that the Department could allow respondent to keep his endorsement until it expires and then deny renewal, there is virtually no practical difference between revoking his endorsement and allowing it to expire, because mortgage

³ Section 10166.05, subdivision (b) also provides that “an expunged or pardoned felony conviction shall not require denial of an application. Respondent was not pardoned, and his conviction was not expunged. No federal statutes authorize expungement, but federal courts may have the authority to grant such relief in some circumstances. (See *People v. Barraza* (1994) 30 Cal.App.4th 114, 120, fn 7.)

⁴ At hearing respondent argued that the crime would not have been a felony under New Jersey law (and introduced a 1973 letter from his attorney to the New Jersey Real Estate Commission arguing as much). Even if this argument is a correct interpretation of New Jersey law, it is irrelevant for present purposes. Under section 10166.05, subdivision (b)(1), “Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.” Federal law therefore governs the question of how to classify respondent’s conviction. The principal federal statute under which he was convicted (18 U.S.C. § 1010) provides for a maximum prison of sentence two years, which makes it a Class E felony. (18 U.S.C. § 3559(a)(5).)

loan originator endorsements “expire on the 31st of December each year.” Revocation, as allowed by section 10166.05, subdivision (b), rather than the prospect of additional administrative proceedings over the Department’s inevitable denial of renewal, is the action that makes the most sense.

ORDER

Respondent Michael Delaney’s mortgage loan originator license endorsement is revoked.

DATED: September 5, 2012



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings