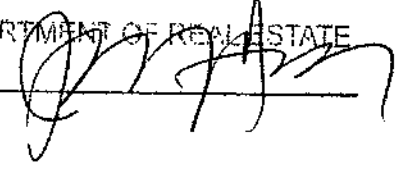


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**FILED**

DEC 14 2012

DEPARTMENT OF REAL ESTATE  
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA  
\* \* \*

In the Matter of the Accusation of )	NO. H-37903 LA
)	L-2012031167
JEFFREY CHRISTOPHER SPRANKLE, )	
)	
Respondent. )	
)	

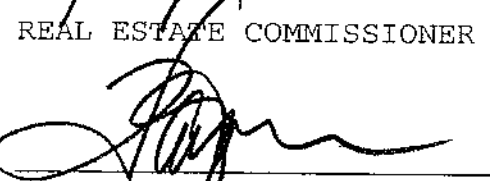
ORDER DENYING RECONSIDERATION

On October 20, 2012, a Decision was rendered in the above-entitled matter. Said Decision was to become effective on November 14, 2012, and was stayed by separate Order to December 14, 2012.

On November 12, 2012, Respondent petitioned for reconsideration of the Decision of October 20, 2012.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of October 20, 2012, and reconsideration is hereby denied.

IT IS SO ORDERED 12/12/2012

REAL ESTATE COMMISSIONER  
  
By WAYNE S. BELL  
Chief Counsel



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FILED

OCT 25 2012

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

BY: 

\* \* \* \* \*

In the Matter of the Accusation of ) No. H-37903 LA  
 )  
 JEFFREY CHRISTOPHER SPRANKLE, ) OAH No.2012031167  
 )  
 )  
 Respondent(s). )  
 \_\_\_\_\_)

DECISION

The Proposed Decision dated October 3, 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.

This Decision shall become effective at 12  
o'clock  
noon on NOV 14 2012

IT IS SO ORDERED 10/20/2012

Real Estate Commissioner



By WAYNE S. BELL  
Chief Counsel

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JEFFREY CHRISTOPHER SPRANKLE,

Respondent.

Case No. H-37903 -- LA

OAH No. 2012031167

**PROPOSED DECISION**

This matter came on regularly for hearing on August 31, 2012, before Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, in San Diego, California.

Real Estate Counsel Diane Lee represented complainant, Sylvia Yrigollen, Deputy Real Estate Commissioner, Department of Real Estate (department).

Jeffrey Christopher Sprankle (respondent) represented himself. Respondent also represented himself as a licensed real estate broker and designated broker-officer of New American Lending Inc., in case No. H-37901-LA (OAH 2012031165), a companion case that was heard jointly with this matter.

Oral and documentary evidence was received and the matter was submitted on August 31, 2012.

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On April 12, 2004, the department issued a real estate broker license to respondent. The license was renewed in 2008. Respondent's broker license was to expire April 11, 2012, unless renewed.

2. On May 24, 2005, the department issued a corporation license to New American Lending Inc. (New American); respondent was listed as designated officer. The corporate license was renewed in 2009. The corporation license and designation of New American expires May 23, 2013, unless renewed.

3. The department approved an Individual Mortgage Loan Originator License Endorsement, ID 290055 (Individual Endorsement), for respondent effective November 18,

2010. The Endorsement was inactive for a brief period of time beginning in September 2011, but was again approved as of December 13, 2011.

4. The department approved a Company Mortgage Loan Originator License Endorsement, ID 372473 (Company Endorsement), for New American effective November 9, 2010. The Company Endorsement was inactive for a brief period of time beginning in August 2011, but was again approved as of December 13, 2011. The Company Endorsement was terminated for a period of eight days until it was renewed effective January 9, 2012.

5. On February 15, 2012, the Accusation in Case No. H-37903 – LA was signed by Sylvia Yrigollen in her official capacity as Deputy Real Estate Commissioner of the department. The accusation and other required jurisdictional documents were served upon respondent.

The Accusation seeks to revoke or suspend the Individual and Company Endorsements on the basis that respondent's conviction for wire fraud in 1996 absolutely bars his ability to hold the Individual Endorsement and act as the qualifying individual for the Company Endorsement. The Accusation further seeks to revoke or suspend the Individual and Company Endorsements based upon respondent's failure to disclose his conviction in the license endorsement applications. The Accusation also seeks an award of costs.

6. Respondent timely filed a notice of defense.

*Respondent's January 12, 1996 Conviction for Wire Fraud*

7. On October 25, 1995, a twelve-count federal indictment, Case No. 95-1808-IEG, was filed against respondent and another individual in the United States District Court for the Southern District of California.

8. On January 12, 1996, respondent signed a signed a seventeen page Consolidated Plea Agreement in which he pled guilty to four felony counts of wire fraud<sup>1</sup> and acknowledged under penalty of perjury that "the facts in the 'factual basis' paragraph [in the plea agreement] are true."

In the factual basis paragraph, respondent admitted that from February 1994 to September 1994, he schemed with another individual to "obtain monies from individuals, primarily the elderly, by contacting them over the interstate telephone wires and inducing them to send money through the U.S. Mail and by private carrier, by means of false and fraudulent misrepresentations and promises." Respondent also admitted in the plea agreement that the scheme he participated in involved contacting former victims of

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<sup>1</sup> Two additional counts alleged to be contained in a second indictment are referenced in the plea agreement, but no additional evidence was presented relating to these counts or the second indictment.

fraudulent telemarketers and falsely representing that the victims could recover money lost to the prior fraudulent telemarketers by paying a fee for services or taxes allegedly owed so that the recovered funds could be released. Respondent further admitted to leasing mailboxes under a variety of business names and inducing victims to send the money to the mail drop locations he rented. Respondent admitted that \$44,017 was generated by these fraudulent activities.

9. On December 6, 1996, in the United States District Court for the Southern District of California, in case number 95-1808-IEG, respondent was sentenced on four counts of wire fraud (18 U.S.C. 1343). In exchange for his plea to four counts in the indictment, an additional eight counts were dismissed. Respondent was placed on three years probation with certain terms and conditions including the requirement that he "reside in a Community Correction Center" for six months and participate in a program of drug or alcohol abuse treatment. Respondent was further ordered to pay fines and fees of approximately \$2200.

10. By Petition on Probation dated June 23, 1997, it was reported by the Chief Probation Officer of the Court that respondent tested positive for cocaine on May 19 and 27, 1997.

11. By Petition on Probation dated November 6, 1997, the Chief Probation Officer of the Court reported that respondent "failed to participate in, and complete, a residential drug treatment program . . ." and that respondent was terminated from the program on October 21, 1997. As a result, respondent's probation was revoked on November 24, 1997, and respondent was sentenced to serve eight months of incarceration.

#### *Respondent's Failure to Disclose the Conviction*

12. To obtain an individual mortgage loan originator (IMLO) endorsement, a licensed real estate salesperson, broker, or licensed corporation broker/officer submits an on-line application to the Nationwide Mortgage Licensing System and Registry (NMLS). On August 31, 2010, respondent completed an IMLO endorsement application and submitted it to the NMLS. The application submitted by respondent required certain disclosures in categories entitled "Financial Disclosures," "Criminal Disclosures," "Civil Judicial Disclosures," "Regulatory Action," "Consumer Arbitration/Civil Litigation Disclosure," and "Termination Disclosure."

The beginning questions in the Financial Disclosure section of the application completed by respondent were prefaced by the phrase "Within the past 10 years: . . ." The first question in the Criminal Disclosure section asked, "Have you ever been convicted of or pled guilty or nolo contendere ('no contest') . . . to any felony?" The question did not contain the qualifying language found in the Financial Disclosure section of the application. Respondent answered "No" to the question asking if he had ever been convicted of a felony. In the application, respondent asserted under oath that "the information and statements contained herein . . . are current, true, accurate and complete and are made under the penalty of perjury . . ."

*Department's Background Check and Investigation of Respondent*

13. Robert J. Bader (Bader) is an employee of the department in the Mortgage Loan Activities Section. Bader conducts background reviews of individual and company applicants for a Mortgage Loan Originator license endorsement. Bader began conducting a review of the IMLO application submitted by respondent in mid-May 2011. In the course of his investigation, Bader discovered respondent's 1996 federal conviction that was not disclosed in his application.

14. On or about August 27, 2011, after learning that the department was aware of his failure to disclose his 1996 conviction, respondent provided the department with a "Conviction Detail Report" in which he denied knowledge that the telemarketing company he had worked for was doing anything illegal. Respondent wrote, "I didn't understand that these customers were not receiving awards for their purchases which were promised to them for purchasing vitamins or skin care. I was motivated to sell and became proficient in closing customers." Respondent also professed to being "naïve." Respondent explained his failure to disclose the conviction by stating, "I thought the question asked for felonies in the last 10 years. I felt that since I've rehabilitated my life, this infraction was in my past." Respondent certified that his responses were true and correct. Respondent's explanation of the circumstances of his conviction was diametrically opposed to the facts he admitted in the Consolidated Plea Agreement. Additionally, his conviction was for four felonies and not for an infraction.

15. On November 3, 2011, for the first time, respondent amended his IMLO application and responded "yes" to the question asking whether he had been convicted of a felony.

*Respondent's Explanation of the Failure to Disclose His Conviction*

16. Respondent testified that he believed he was not required to disclose his conviction on the IMLO application because the form was confusing and because he believed that he was only required to disclose convictions that occurred more than ten years prior. Respondent's belief that he was only required to disclose convictions that occurred within the recent ten year period derived from the qualifying language in the Financial Disclosure section that immediately preceded the Criminal Disclosure section. Respondent asserted that the department acknowledged the confusing nature of the version of the application he signed by changing the format of the application so that the various categories of disclosures are clearly compartmentalized in later versions of the application.

Respondent stated that he had no intent to hide his conviction from the department. He was aware that the application advised applicants that a background check would be conducted.

Contrary to respondent's assertions, the IMLO form applications contain virtually the same language; the ten year limitation applies only to financial disclosures. The change

respondent suggested was made in the layout of the later application may be a function of how the document was printed; no substantive changes were made that would support respondent's position.

## LEGAL CONCLUSIONS

### *Applicable Statutory and Regulatory Provisions*

1. The Secure and Fair Enforcement Mortgage Licensing Act of 2008 (Safe Act), 12 U.S.C. section 5101 et seq., provides, among other things, minimum standards for the licensing of those who work in the home mortgage industry. Legislation implementing the Safe Act in California is contained in Business & Professions Code sections 10166.01 et seq.

2. Business and Professions Code section 10166.05 states in part:

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 all of the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of a revocation shall not be deemed a revocation.

(b) (1) **The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing, or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.** Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

(2) For purposes of this subdivision, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this subdivision or subdivision (c). (Emphasis added.)

3. Business and professions Code section 10166.051 provides in part:



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:

(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 10166.09, or withholds information or makes a material misstatement in an application for a license endorsement or license endorsement renewal.

4. Business and professions Code section 10177 provides in relevant part that the department may deny the issuance of a license to an applicant who has:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself 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.

5. California Code of Regulations, title 10, section 2911, provides, in part:

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

¶ ¶

(p) Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an applicant for such license endorsement where the applicant has ever been convicted of a felony where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. This ban is not subject to mitigation or rehabilitation.

6. California Code of Regulations, title 10, section 2945.3 states:

A conviction for any felony within seven (7) years of a real estate licensee's application for a mortgage loan originator

license endorsement is cause for denial of the application. 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.

### *Evaluation*

7. Cause exists to revoke respondent's loan originator license endorsement under Bus. & Prof. Code, § 10166.05 and Cal. Code Regs., tit 10, §§ 2911 and 2945.3. Respondent was convicted of four felony counts of wire fraud, convictions that involved acts of fraud and dishonesty. Under Cal. Code of Regs., tit. 10 §§ 2911 and 2945.3, a mortgage loan originator license endorsement may not issue to an applicant who has ever been convicted of a felony involving fraud and dishonesty. Even if respondent had disclosed his felony convictions as required, an endorsement could not have been issued to him. Both the Business and Professions Code and the California Code of Regulations expressly bar the consideration of evidence of mitigation or rehabilitation to permit the endorsement to issue unless the felony conviction has been expunged or pardoned. No evidence was presented of expungement or pardon in this case.

In light of the ban on issuing a mortgage loan originator license endorsement to a person convicted of a felony involving fraud and dishonesty, it is determined that respondent is not qualified to hold an endorsement and that there is no alternative but to revoke the endorsement previously issued to him.

8. Cause also exists to revoke respondent's loan originator license endorsement under Bus. & Prof. Code, § 10166.051(b) because respondent failed to disclose his criminal conviction on his application for the IMLO endorsement.

### *Cost Recovery*


9. The department did not submit a Statement of Costs, and on that basis, department's request for costs is denied.

## ORDER

Individual Mortgage Loan Originator License Endorsement No. ID 290055 issued to Jeffrey Christopher Sprankle is revoked.

Jeffrey Christopher Sprankle is disqualified from serving as the qualifying individual for a Company Mortgage Loan Originator License Endorsement as long as he is barred from holding an Individual Mortgage Loan Originator License Endorsement.

DATED: October 3, 2012

  
SUSAN J. BOYLE  
Administrative Law Judge  
Office of Administrative Hearings