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**FILED**

SEP 12 2013

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	BRE No. H-38566 LA
	)	
MILTON YING CHOW,	)	OAH No. 2013020558
	)	
	)	
	)	
Respondent.	)	
_____	)	

DECISION

The Proposed Decision dated July 31, 2013, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

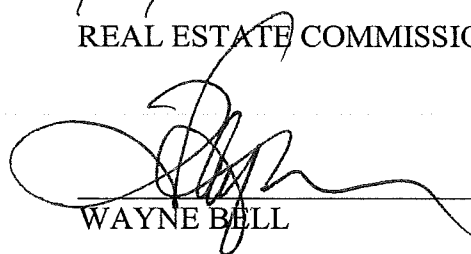
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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

This Decision shall become effective at 12 o'clock noon on  
October 2, 2013.

IT IS SO ORDERED 9/9/2013

REAL ESTATE COMMISSIONER

  
\_\_\_\_\_  
WAYNE BELL

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MILTON YING CHOW

Respondent.

Case No. H-38566 LA

OAH No. 2013020558

**PROPOSED DECISION**

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on June 11, 2013, in Los Angeles, California.

Complainant was represented by Cheryl D. Keily, Counsel for the Bureau of Real Estate (Bureau).

Milton Ying Chow (respondent) appeared personally and was represented by Michael B. Montgomery, Attorney at Law.

Evidence was received and the record was left open to allow complainant to submit a letter brief regarding the relationship between a real estate broker's license and a mortgage loan originator license and of the effect on his broker's license in the event that discipline is imposed on respondent's mortgage loan originator license. Complainant's letter brief was received on July 16, 2013, and marked exhibit 10 for identification only. Complainant did not submit a reply within ten days. The record was closed and the matter as submitted for decision on July 29, 2013. The Administrative Law Judge finds as follows:

**FACTUAL FINDINGS**

1. Complainant, Howard Alston made the Accusation in his official capacity as Deputy Real Estate Commissioner of the State of California.
2. Respondent is presently licensed and/or has licensing rights as a real estate broker under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code.
3. Respondent presently holds an individual mortgage loan originator (MLO) license endorsement.

4. On August 31, 1995, in the Superior Court of California, County of Los Angeles, respondent entered a plea of guilty to seven felony counts charging violations of California Corporations Code sections 25540, subdivision (a), selling securities without obtaining qualification from the Commissioner of Corporations under Corporations Code section 25510 (Exhibit 6, pages 60 and 71). Pursuant to a plea agreement, sentencing was deferred to allow respondent and his co-defendants to pay restitution to the victims. The total amount of restitution ordered by the court was \$500,000. Respondent paid a total of \$20,000 in \$600 monthly installments over a five-year period while sentencing was deferred. On June 8, 2000, the court entered judgment and imposed sentence, reducing the charges against respondent to misdemeanors and placing respondent on probation for six months on the condition that he obey all laws (Exhibit 6, page 83).<sup>1</sup> On August 14, 2007, respondent's conviction was expunged pursuant to Penal Code section 1203.4.

5. The facts and circumstances underlying the conviction are complex and involve respondent and two co-defendants. In or about 1990, respondent's co-defendant, Jose Santiago, who owned and operated The Homeowners Financial Center (THFC), solicited and convinced various homeowners to refinance their homes and to invest the proceeds in THFC on the false representation that they would receive a 14 to 20 percent rate of return on their investment. In fact, THFC was not solvent and eventually filed for bankruptcy, with the homeowners losing the money they invested in THFC. The refinancing for the victim homeowners was handled by respondent through Total Real Estate Enterprises and Total Real Estate Escrow, both of which were owned and operated by respondent. Through these companies, respondent was instrumental and complicit in Mr. Santiago's fraudulent conduct.

6. Respondent's broker's license was suspended for 60 days (forty actual days) in 1992. Respondent asserted in a declaration submitted to the Bureau that the underlying facts of this discipline were that he became a broker for an associate who started a mortgage company and thereafter failed to supervise this associate who employed unlicensed loan originators.

7. Respondent did not disclose his guilty plea set forth in Factual Finding 3 in a 1999 renewal application for his broker's license. Complainant alleges that this failure to disclose is cause for discipline, however, since the imposition of judgment had been deferred until June 8, 2000, it was not a misrepresentation for respondent to answer of "No" to the question: "Within the last four year period, have you been convicted of any violation of law?" A conviction occurs when the court enters a judgment of conviction.

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<sup>1</sup> The court record is inconsistent on the charges on which respondent was convicted. In certain parts of the record, the docket indicates that respondent was convicted of Corporations Code section 25540, subdivisions (a) and (b), however, he only pled guilty to subdivision (a).

8. In a 2003 renewal application for his broker's license, respondent answered "No" to the question: "Within the last four year period, have you been convicted of any violation of law?" Respondent's failure to disclose his June 8, 2000 conviction in his 2003 renewal application was a knowing and willful omission of a material fact.

9. On August 24, 2010, respondent submitted an MLO endorsement application (MU4) to the Nationwide Mortgage Licensing System and Registry (Registry). On November 19, 2010, and on August 17, 2012, respondent made additional MU4 submissions to the Registry as part of his endorsement application. The section of the foregoing applications entitled "Criminal Disclosure" contained the following question: "Have you ever been convicted of or pled guilty or nolo contendere (no contest) in a domestic, foreign or military court to committing or conspiring to commit a misdemeanor involving (i) financial services or a financial services related business, (ii) fraud, (iii) false statement or omissions, (iv) theft or wrongful taking of property, (v) bribery, (vi) perjury, (vii) forgery, (viii) counterfeiting, or (ix) extortion?" Respondent answered "No" to the above question in the MLO endorsement application and in the additional MU4 submissions. Respondent's failure to reveal his conviction in his MLO endorsement application and additional MU4 submissions constitutes withholding information and/or making a material misstatement in said application and additional submissions.

10. Respondent terminated his relationship with Mr. Santiago during the criminal investigation. There was no evidence that respondent, in the operation of his real estate business, has committed or engaged in fraudulent or other misconduct since his entering a guilty plea in 1995. Respondent has been continuously working as a real estate broker since his conviction and has been able to maintain a stable family life despite experiencing the investigation of his real estate business and subsequent criminal proceedings initiated against him.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 10166.05 states in pertinent part:

Notwithstanding any other provision of the 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:

(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.

2. Business and Professions Code section 10166.051 states in pertinent 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

3. California Code of Regulations, title 10, section 2758.3 states:

The Commissioner's finding required by Section 10166.05(c) of the Business and Professions Code relates to any matter, personal or professional, that may impact upon an applicant's propensity to operate honestly, fairly, and efficiently when engaging in the fiduciary role of a mortgage loan originator.

In order to apply for a mortgage loan originator license endorsement, an applicant shall authorize the Nationwide Mortgage Licensing System and Registry (NMLSR) to obtain the applicant's current credit report. The credit report will be used as needed to validate the applicant's responses to the NMLSR's electronic application form, in order to support the Commissioner's finding required by Section 10166.05(c) of the Business and Professions Code.

(a) The applicant may be precluded from obtaining a mortgage loan originator license endorsement where his or her personal history includes:

(1) any liens or judgments for fraud, misrepresentation, dishonest dealing, and/or mishandling of trust funds, or

(2) other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant.

(b) Notwithstanding the requirements above, where an applicant for a mortgage loan originator license endorsement (1) is currently holding a restricted real estate license, or (2) has a right to a restricted license and is making a dual application for the restricted license and mortgage loan originator license endorsement, such applicant must demonstrate, where pertinent, the completion of restitution to any person who has suffered monetary losses through acts or omissions of the applicant that include, but are not limited to, those that substantially related to the qualifications, functions or duties of a real estate licensee as defined in Section 2910 of these regulations, and/or the discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

4. Cause exists to suspend or revoke respondent's individual mortgage loan originator endorsement under Business and Professions Code sections 10166.05, 10166.051, 490 and 10177, subdivision (b), and California Code of Regulations, title 10, section 2758.3, based on respondent's misconduct and conviction set forth in Factual Findings 4 and 5.

5. Cause exists to suspend or revoke respondent's individual mortgage loan originator endorsement under Business and Professions Code sections 10166.05, 10166.051, 498 and 10177, subdivision (a), for failing to disclose his conviction in his applications for an MLO endorsement.

6. California Code of Regulations, title 10, section 2911, sets forth criteria for establishing rehabilitation. The rehabilitation criteria set forth in California Code of Regulations, title 10, section 2911, are applicable to this case as follows:

*(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. Respondent was convicted of the offenses 13 years ago. The underlying offenses occurred 23 years ago.*

*(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee. Respondent paid \$20,000 of the \$500,000 restitution order.*

*(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action. Respondent's conviction has been expunged.*

*(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of section 290 of the Penal Code. This factor is not applicable to this case.*

(e) *Successful completion or early discharge from probation or parole.* Respondent has completed probation.

(f) *Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.* This factor is not applicable to this case because there was no evidence that respondent has an alcohol or substance abuse problem.

(g) *Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.* No fines and fees were imposed by the Superior Court.

(h) *Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.* There was no evidence that respondent has engaged in any fraudulent conduct since 1990.

(i) *New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.* Respondent is no longer associated with his co-defendants.

(j) *Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.* Despite his conviction, respondent has maintained a stable family life.

(k) *Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.* Respondent has taken courses satisfying Business and Professions Code section 10153.2.

(l) *Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.* Respondent did not present evidence of significant community involvement.

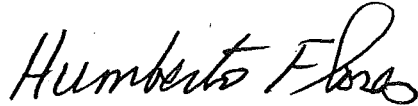
(m) *Change in attitude from that which existed at the time of the commission of the criminal acts. . . .* Respondent testified that he operates his real estate and loan mortgage businesses in accordance with all rules and regulations governing real estate brokers and loan originators. However, respondent's failure to disclose his convictions in his 2003 renewal application and in his 2010 and 2012 loan originator endorsement application is cause for concern.

7. Respondent's conduct underlying his conviction occurred in 1990. He pled guilty in 1995, and was convicted in 2000. There has been a significant passage of time. Further, there was no evidence of complaints against respondent or that respondent has engaged in any misconduct in connection with the operation of his real estate business since his conviction. However, respondent's failure to disclose his conviction on his MLO endorsement applications is cause for concern. In addition, respondent's conviction was based on misconduct that was directly related to the duties of a loan originator in that respondent handled the home refinancing for the victims. It is noted that the statutes and regulations governing mortgage loan originators set forth rigorous standards for licensees in the areas of financial responsibility, character and fitness. These standards are in place to protect the public in general and homeowners in particular who generally provide sensitive personal and financial information to mortgage loan originators when applying for mortgages. Based on the facts and circumstances of this case, and application of Business and Professions Code sections 10166.05 and 10166.051 and California Code of Regulations, title 10, section 2758.3, revocation of respondent's loan originator's license is the appropriate discipline.

#### ORDER

The Individual Mortgage Loan Originator Endorsement previously issued to respondent Milton Ying Chow, under the Real Estate Law is revoked.

DATED: July 31, 2013

  
HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings