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FILED

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

OCT 04 2018

DEPT. OF REAL ESTATE

By *[Signature]*

In the Matter of the Application of:

CHRISTOPHER GARVIN

Respondent.

) DRE No. H-40860 LA
)
)
) OAH No. 2018010493
)

DECISION

The Proposed Decision dated Aug 31, 2018, 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 application for a mortgage loan originator license endorsement is denied. The earliest date on which the applicant may reapply for a license is one year from the effective date of this Decision. If and when application is again made for this license, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

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

This Decision shall become effective at 12 o'clock noon on October 24, 2018.

IT IS SO ORDERED September 28, 2018

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

CHRISTOPHER GARVIN,

Respondent.

Case No. H-40860 LA

OAH No. 2018010493

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 15, 2018, in Los Angeles.

Diane Lee, Real Estate Counsel, represented complainant Chika Sunquist, a Deputy Real Estate Commissioner, Department of Real Estate (Department),¹ State of California.

Respondent Christopher Garvin did not appear and was not represented.

Complainant requested that respondent's default be entered and that complainant be permitted to prove up the allegations set forth in the Statement of Issues. This matter proceeded as a default under Government Code section 11520. Documentary evidence was received. The record was closed and the matter was submitted for decision on August 15, 2018.

SUMMARY

Complainant alleges that respondent's application for a mortgage loan originator (MLO) license endorsement should be denied based on (1) respondent's lack of good character and general fitness, as established by respondent's criminal convictions and his failure to disclose those convictions, civil judgments against him, and prior license discipline on his license endorsement application and (2) respondent's knowingly making false statements of material fact on a license endorsement application. Respondent offered no evidence of mitigation or rehabilitation. As discussed below, respondent did not establish that his application should be granted.

¹ When the Statement of Issues in this matter was filed, the Department was a bureau of the Department of Consumer Affairs. "Department" herein includes the Bureau.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On November 17, 2006, the Department issued to respondent real estate broker license number 01749281. By Stipulation and Agreement effective November 25, 2014, in case number H-39224 LA, in which an Accusation was filed against respondent, respondent's license was revoked and a restricted license was issued to respondent. Respondent's license is scheduled to expire on March 5, 2019. On January 17, 2017, respondent filed with the Bureau an application for an individual (MU4) MLO license endorsement.

2. Complainant filed a Statement of Issues in her official capacity. On January 5, 2018, respondent timely filed a notice of defense, which he signed and on which he wrote his address, and requested a hearing.

3. On January 19, 2018, complainant served a notice of hearing on respondent at his address of record, which was also the address respondent identified on his notice of defense. On March 30, 2018, complainant served a Notice of Continued Hearing on Application on respondent at the same address. The Notice of Continued Hearing provided that the hearing would take place on August 15, 2018, at 1:30 p.m. at the Office of Administrative Hearings, 320 W. Fourth Street, Suite 630, Los Angeles, CA 90013. The matter was called for hearing at the date, time, and location set forth in the Notice of Continued Hearing. Counsel for complainant appeared for hearing.

4. Service of the Notice of Continued Hearing was proper. Respondent's signed and addressed notice of defense and the fact that complainant sent the notice of continued hearing to respondent's address of record evidence that respondent was put on notice of the hearing date, time, and location.

5. There was no appearance by or on behalf of respondent. Respondent's failure to appear at the hearing constituted a default. (Factual Findings 1-4.) A default was, therefore, declared and the hearing proceeded as a default prove-up.

Respondent's Criminal Convictions

6. On July 14, 1994, in the Circuit Court of Martin County, State of Florida, case no. 94-3045MMA, respondent was convicted of violating Florida Statute chapter 812.015 (retail theft), a misdemeanor.

7. On October 31, 1994, in the Circuit Court of St. Lucie County, State of Florida, case no. 1994MM001670 A, respondent was convicted of violating Florida Statute chapter 812.014 (theft), a misdemeanor.

8. On March 2, 2012, in the Superior Court of California, County of Los Angeles, in case no. LA067779, respondent pled nolo contendere to and was convicted of violating Penal Code section 23105, subdivision (a) (reckless driving with bodily injury to another person), a

misdemeanor. The court suspended imposition of sentence and placed respondent on three years' summary probation on terms and conditions including that respondent serve 30 days in county jail or perform 30 days of probation adult alternative work services ("PAAWS"), pay various fines and fees, and pay restitution to the victim in the following amounts: \$110,457.81 for past medical expenses, \$38,707.82 for lost earning, \$250,000 for future medical expenses, \$104,833 for attorney fees and costs, and \$2,000 for preparation of the victim's motion and court appearance. On April 10, 2014, the court ordered respondent to serve an additional 192 hours of community service. On July 16, 2014, the court ordered respondent to serve an additional 32 days in jail. On May 28, 2015, the court noted probation had terminated, so it no longer had jurisdiction, and the victim had to proceed civilly to enforce the judgment.

9. The circumstances underlying respondent's convictions are not reflected in the evidence.

Civil Judgments Against Respondent

10. On April 1, 2010, in the Superior Court of California, Small Claims Court, County of Los Angeles, case number 10V00149, Zita G. filed a claim against respondent, doing business as Innovative Finance, for taking unauthorized commissions for loan refinance services. On August 24, 2010, the court found for Zita G. and ordered respondent to pay \$4,930 in principal plus \$75 in costs on plaintiff's claim.

11. On February 13, 2014, in the Superior Court of California, County of Los Angeles, case number 14R01593, DD P. filed a complaint for unlawful detainer against respondent. On or about March 17, 2014, the court found for DD P., and ordered respondent to pay \$3,776.61.

Prior Discipline Against Respondent's License

12. On November 5, 2014, the Department, in case no. H-39224 LA (OAH case no. 2014010648), filed a Decision accepting the Stipulation and Agreement revoking respondent's real estate broker license; provided, however, a restricted real estate broker license be issued to respondent pursuant to certain terms and conditions. This Decision became effective on November 25, 2014. Discipline was based upon respondent's March 2, 2012 conviction.

Respondent's License Application

13. The Department's MLO License Endorsement Application, at question H, asks, "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 statements or omissions, (iv) theft or wrongful taking of property, (v) bribery, (vi) perjury, (vii) forgery, (viii) counterfeiting, or (ix) extortion?" (Ex. 3.)

14. On his January 17, 2017, license endorsement application, in response to question H, respondent answered labeled "No" (ex. 3), and failed to disclose his 1994 criminal convictions, discussed at Factual Findings 6 and 7, above.

15. The Department's MLO License Endorsement Application, at question K, asks, "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever: . . . (5) revoked your registration or license?" (Ex. 3.)

16. On his license endorsement application, in response to question K(5), respondent answered "No" (ex. 3), and failed to disclose his prior real estate license discipline, discussed at Factual Finding 12, above.

17. The Department's MLO License Endorsement Application, at question P, asks, "Have you ever been named as a respondent/defendant in a financial services-related consumer-initiated arbitration or civil judgment which: (2) resulted in an arbitration award or civil judgment against you, regardless of the amount or that required corrective action?" (Ex. 3.)

18. On his license endorsement application, in response to question P, respondent answered "No" (ex. 3), and failed to disclose the civil judgments against him, discussed at Factual Finding 10 and 11, above.

Mitigation and Rehabilitation

19. Respondent, who did not appear at hearing, offered no evidence of mitigation or rehabilitation.

LEGAL CONCLUSIONS

1. The real estate commissioner "has full power to regulate and control the issuance and revocation . . . of all licenses to be issued . . ." (Bus. & Prof. Code, § 10071.) "Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 10050.1.)

2. "[T]he commissioner shall not issue a license endorsement to act as a mortgage loan originator to an applicant unless the commissioner" finds, among other things, that "[t]he 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." (Bus. & Prof. Code, § 10166.05, subd. (c).)

3. The commissioner may deny "a mortgage loan originator license endorsement, if an applicant . . . withholds information or makes a material misstatement in an application for a license endorsement . . ." (Bus. & Prof. Code, § 10166.051, subd. (b).)

4. Cause exists to deny respondent's application for an MLO license endorsement under Business and Professions Code section 10166.05, subdivision (c), based on Factual Findings 6 through 18. Respondent was twice convicted of theft and was convicted of reckless driving causing bodily injury. The crimes reflect dishonesty and a reckless disregard for the safety of the public; they, together with respondent's failure to disclose on his application all of his convictions, the civil judgments against him, and his prior license discipline reflect a lack of financial responsibility, character, and general fitness to command confidence that he would operate honestly if he were issued an MLO license endorsement.

5. Cause exists to deny respondent's application for an MLO license endorsement under Business and Professions Code section 10166.051, subdivision (b), as his failure to reveal his criminal convictions, prior license discipline, and civil judgments in his application for an MLO license endorsement constitutes knowingly making false statements of material fact required to be revealed in the application, based on Factual Findings 6 through 18.

6. Cause for denial of respondent's application having been established, respondent bears the burden of proving that he is sufficiently rehabilitated from his conviction to warrant the license endorsement. (See *Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.) The "more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be." (*In re Gossage* (2000) 23 Cal.4th 1080, 1096.)

7. The criteria for assessing the rehabilitation of a license endorsement applicant include whether at least two years have passed since the most recent conviction, any restitution the applicant has made, expungement of convictions for immoral acts, successful completion of probation, payment of fines imposed in connection with a criminal conviction, completion of educational courses taken for economic self-improvement, involvement in community programs designed to provide social benefits, and changes in attitude as reflected by, for example, an absence of subsequent convictions. (Cal. Code Regs., tit. 10, § 2911.)

8. Respondent offered no evidence of rehabilitation, as set forth in Factual Finding 19. Respondent did not, therefore, establish that he is sufficiently rehabilitated from his failure to disclose his criminal convictions, civil judgments, and license discipline on his license endorsement application to justify granting his application for an MLO license endorsement, based on Factual Findings 6 through 19 and Legal Conclusions 1 through 7.

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ORDER

The application of respondent Christopher Garvin for an MLO license endorsement is denied.

DATED: August 31, 2018

DocuSigned by:

Howard W. Cohen

HOWARD W. COHEN

Administrative Law Judge
Office of Administrative Hearings