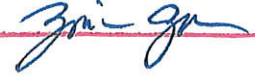


FILED

MAY 14 2019

DEPT. OF REAL ESTATE

By



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against

MARKET ORDER OPEN LISTINGS
XCHANGE; and CHRISTOPHER
MARK LEE,

Respondents.

DRE No. H-41133 LA
OAH No. 2018090598

In the Matter of the Accusation Against

MARKET ORDER OPEN LISTINGS
XCHANGE INC.; MARKET ORDER
FINANCIAL SERVICES INC., and
HOMENTUM ACQUISITIONS
INTERNATIONAL, INC.,

Respondents.

DRE No. H-41138 LA
OAH No. 2018090619

In the Matter of the Bar Order Against

CHRISTOPHER MARK LEE aka
Rashid Khalfani aka R.K. Khalfani aka
Rashid Khalid Khalfani aka Richard
Khalfani,

Respondent.

DRE No. H-41136 LA
OAH No. 2018100279

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DECISION

The Proposed Decision dated April 9, 2019, 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 revokes one or more real estate licenses on the ground of the violation of the Real Estate Law, Part 1 commencing with Section 10000 of the Business and Professions Code ("Code") and/or the Regulations of the Real Estate Commissioner, Title 10, Chapter 6 of the California Code of Regulations ("Regulations").

This Decision also sustains the issuance of a Bar Order against an individual who is not licensed by the Department of Real Estate in any capacity.

The right to reinstatement of a revoked real estate license 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 Respondents.

This Decision shall become effective at 12 o'clock noon on JUN -3 2019.

IT IS SO ORDERED. May 6, 2019

DANIEL J. SANDRI
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

MARKET ORDER OPEN LISTINGS
XCHANGE INC.; and CHRISTOPHER
MARK LEE,

Respondents.

Case No. H-41133 LA

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MARKET ORDER OPEN LISTINGS
XCHANGE INC., MARKET ORDER
FINANCIAL SERVICES INC.; and
HOMENTUM ACQUISITIONS
INTERNATIONAL, INC.,

Respondents.

Case No. H-41138 LA

OAH No. 2018090619

In the Matter of the Bar Order Against:

CHRISTOPHER MARK LEE aka Rashid
Khalfani aka R.K. Khalfani aka Rashid
Khalid Khalfani aka Richard Khalfani,

Respondent.

Case No. H-41136 LA

OAH No. 2018100279

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, heard these consolidated matters on March 11, 2019, in Los Angeles, California.

Amelia V. Vetrone, Counsel, represented Chika Sunquist (complainant), Supervising Special Investigator, Department of Real Estate (Department).

Wylie Yang, Attorney at Law, represented Market Order Open Listings Xchange Inc. (MOOLX), Market Order Financial Services Inc. (MOFS), and Homentum Acquisitions International Inc. (HAI). No representatives of MOOLX, MOFS, and HAI were present at the hearing.

No appearances were made by or on behalf of Christopher Mark Lee, aka Rashid Khalfani aka R.K. Khalfani aka Rashid Khalid Khalfani aka Richard Khalfani (respondent Lee).

On November 13, 2018, MOOLX withdrew its application for a mortgage loan originator license endorsement, and on December 11, 2018, respondent Lee withdrew his application for a mortgage loan originator license endorsement. Due to these withdrawals, on December 18, 2018, complainant dismissed the Statement of Issues against MOOLX and respondent Lee (DRE No. H-41133 LA; OAH No. 2018090598). Consequently, this hearing proceeded on the Accusation against MOOLX, MOFS, and HAI (DRE No. H-41138 LA; OAH No. 2018090619), and the Bar Order against respondent Lee (DRE No. H-41136 LA; OAH No. 2018100279) only.

The matters were consolidated for hearing and decision at the Department's request pursuant to California Code of Regulations, title 1, section 1016, subdivision (d). The record was closed, and the matters submitted for decision on March 11, 2019.

FACTUAL FINDINGS

Parties and Jurisdiction

THE ACCUSATION AGAINST MOOLX, MOFS, AND HAI

1. A. On January 19, 2017, the Department¹ issued a corporate real estate broker license to MOOLX, with real estate broker Eric L. Nelson as its Designated Officer. Beginning on March 6, 2018, and continuing to the present, real estate broker Matthew Eric Sauer has replaced Eric L. Nelson as the Designated Officer of MOOLX. MOOLX's corporate real estate broker license is scheduled to expire on January 18, 2021, unless renewed. MOOLX presently holds licensing rights under the Real Estate Law, Part 1 of Division 4, of the Business and Professions Code.

B. On March 15, 2016, the Department issued a corporate real estate broker license to MOFS, with real estate broker Aldon Mike Soon as its Designated Officer. Beginning on February 28, 2018, and continuing to the present, real estate broker Egbert Oostburg has replaced Aldon Mike Soon as the Designated Officer of MOFS. MOFS's corporate real estate broker license is scheduled to expire on March 14, 2020, unless

¹ Between July 1, 2013, and July 1, 2018, the Department operated as the Bureau of Real Estate under the Department of Consumer Affairs.

renewed. MOFS presently holds licensing rights under the Real Estate Law, Part 1 of Division 4, of the Business and Professions Code.

C. On February 10, 2018, the Department issued a corporate real estate broker license to HAI. Since that date and continuing to the present, real estate broker Richard Elliott Baron has been the Designated Officer of HAI. HAI's corporate real estate broker license is scheduled to expire on February 9, 2022, unless renewed. HAI presently holds licensing rights under the Real Estate Law, Part 1 of Division 4, of the Business and Professions Code.

2. On August 6, 2018, complainant filed the Accusation in her official capacity. Respondents MOOLX, MOFS, and HAI timely filed a Notice of Defense.

THE BAR ORDER AGAINST RESPONDENT LEE

3. Respondent Lee is not currently licensed in any capacity by the Department.

4. On August 10, 2018, Daniel J. Sandri, the Acting Real Estate Commissioner (Commissioner), while acting in his official capacity and pursuant to his authority under Business and Professions Code section 10087, subdivision (a)(1), filed a Notice of Intention to Issue a Bar Order and Preliminary Bar Order, seeking to bar and prohibit respondent Lee for a period of 36 months from engaging in any business activity involving real estate that is subject to regulation under the Real Estate Law.

5. On October 10, 2018, respondent Lee filed a Request for Hearing. On September 20, 2018, respondent was properly served with notice of the instant hearing date, time, and place.

6. As indicated above, on the day of the hearing, no appearance was made by or on behalf of respondent Lee, despite the fact that he was served with timely and appropriate notice as required by the Government Code section 11509. Therefore, this matter proceeded as a default prove-up under Government Code section 11520.

Relationship between MOOLX, MOFS, HAI, and Respondent Lee

7. A. On November 29, 2017, MOOLX, through its then Designated Officer, Eric L. Nelson, submitted a mortgage loan originator endorsement application to the Nationwide Mortgage Licensing System and Registry. On this mortgage loan originator endorsement application, "Rashid Khalfani" is listed as the Chief Executive Officer (CEO)² of MOOLX.

² Although the application also listed Rashid Khalfani as 90 percent owner of MOOLX, a request for modification, effective November 29, 2017, amended Rashid Khalfani's ownership of MOOLX to 0 percent. (Ex. 15, p. 7.)

B. On a Statement of Information dated June 22, 2017, filed with the Secretary of State of California, "RK Khalfani" is listed as the CEO, Secretary, and Chief Financial Officer (CFO) of MOFS.

C. On a Statement of Information dated March 7, 2018, filed with the Secretary of State of California, "R. Khalfani" is listed as the CFO and Director of HAI.

D. "Rashid Khalfani," "RK Khalfani," and "R. Khalfani" are aliases of respondent Lee.

Respondent Lee's Criminal Convictions and History of License Discipline

8. A. On December 12, 2008, by an Order Denying Application for a Real Estate License, the Department denied respondent Lee's application for a conditional salesperson license. (DRE case number H-30529 LA.) The denial arose from respondent Lee's conviction based on his guilty plea of violating five counts of Penal Code section 487, subdivision (a) (grand theft), all felonies, with enhancements under Penal Code sections 12022.6, subdivision (a)(3) (taking property valued in excess of \$1 million during the commission and attempted commission of the offense) and 186.11, subdivision (a)(2) (engaging in a pattern of related fraudulent felony conduct involving the taking of more than \$500,000). (Superior Court of California, County of Orange, case number 01NF2026.) In aggravation, on November 14, 2000, respondent Lee was convicted on his guilty plea of violating Penal Code section 12031, subdivision (a)(1) (carrying a loaded firearm in a vehicle in a city), a misdemeanor. (Superior Court of California, County of Los Angeles, case number 0WH048989.)

B. For his felony conviction of five counts of grand theft, respondent Lee was sentenced to serve two years in state prison. Respondent Lee served his time in prison. On March 14, 2011, respondent Lee motioned the criminal court to reduce these offenses from felonies to misdemeanors, but the court denied the motion on April 12, 2011.

C. For his misdemeanor conviction of carrying a loaded firearm, imposition of sentencing was suspended, and respondent Lee was placed on summary probation for 36 months under certain terms and conditions, including incarceration for 10 days in county jail, less credit for one day served; and payment of \$889 in fines, fees, and restitution. Respondent Lee paid all fines, fees, and restitution. However, the record did not establish whether respondent completed his probation or whether the misdemeanor conviction has been dismissed pursuant to Penal Code section 1203.4.

D. The facts and circumstances surrounding these criminal convictions were not established by the record.

9. A. On August 2, 2013, by an Order in DRE case number H-38291 LA, effective October 22, 2013, the Commissioner accepted the voluntary surrender of the corporate real estate license for Aspyration Capital Advisors, Inc. (Aspyration), a corporation

owned and directed by respondent Lee. In a declaration dated July 26, 2013, respondent Lee admitted to all allegations contained in the Accusation. Specifically, the Accusation alleged that while respondent Lee was never licensed by the Department in any capacity, he negotiated the sale and purchase of a property. Moreover, respondent Lee forged the buyer's signature on the escrow instructions, causing \$25,000 of earnest money deposit to be wired to Aspyration without the buyer's consent. When the buyer cancelled the transaction, respondent Lee misappropriated an additional \$39,500 of earnest money deposit. In total, respondent Lee failed to return \$59,500 of earnest money deposit to the buyer.

B. On August 10, 2012, in DRE case number H-38423 LA, the Department issued an Order to Desist and Refrain to Aspyration based on the conduct described above.

10. A. On November 13, 2013, respondent Lee was convicted on his plea of nolo contendere of violating Penal Code section 470, forgery, a misdemeanor. (Superior Court of California, County of Los Angeles, case number KA102218.)

B. For this conviction, respondent Lee was placed on summary probation for 36 months under terms and conditions, including incarceration for 180 days in county jail, less credit for four days served; and payment of \$9,900 in fines, fees, and restitution.

C. Respondent Lee served his time in jail and paid all of the fines, fees, and restitution. On October 30, 2015, the criminal court dismissed the conviction pursuant to Penal Code section 1203.4.

D. The facts and circumstances surrounding this criminal conviction were not established by the record.

11. On March 22, 2018, the United District Court for the Central District of California, in *Securities and Exchange Commission v. Capital Cove Bancorp LLC; Christopher M. Lee aka Rashid K. Khalfani* (case number 15-cv-00980), entered a final judgment against the defendants. Respondent Lee was permanently restrained and enjoined from violating 15 United States Code (U.S.C.) section 78j(b) (using any means of interstate commerce or any facility of national securities exchange in connection with the purchase or sale of any security); 15 U.S.C. section 77q(a) (offering sale of any security by any means of interstate commerce); 15 U.S.C. section 77(e) (offering to sell or buy any security without a registration statement); 15 U.S.C. section 80b-7 (making any untrue statement of material fact or omitting to state any material fact in a registration application); and 15 U.S.C. section 203A (registering as an investment adviser with assets of greater than \$250 million). The final judgment also ordered respondent Lee and Capital Cove Bancorp LLC to pay, jointly and severally, disgorgement and interest in the amount of \$2,011,433.92, and ordered respondent Lee to pay \$1,829,868 in civil penalties.

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Failure to Reveal the Need for a Corporate Background Statement

12. MOOLX, MOFS, and HAI each submitted a separate application for their corporate real estate broker licenses. The last page of their respective corporate license application contains the following explanations set forth in a large text box:

SECTION III – REGULATION 2746³

Corporate Real Estate Brokers, Officers, Directors and Shareholders

(a) At the time of application for, or in the reinstatement of, an original real estate broker license, the designated officer shall file a background statement of information for each director, the chief executive officer, the president, first level vice presidents, secretary, chief financial officer, subordinate officers with responsibility for forming policy of the corporation and all natural persons owning or controlling more than ten percent of its shares, if such person has been the subject of any of the following:

(1) Received an order or judgment issued by a court or governmental agency during the preceding 10 years temporarily or permanently restraining or enjoining any business conduct, practice or employment;

(2) Has had a license to engage in or practice real estate or other regulated profession, occupation or vocation denied, suspended or revoked during the preceding 10 years;

(3) Engaged in acts requiring a real estate license of any state without the benefit of a valid license or permit authorizing that conduct during the preceding 10 years which have been enjoined by a court of law or administrative tribunal;

(4) Been convicted of a crime which is substantially related to the qualifications, functions or duties of a licensee of the Department as specified in Section 2910 of these Regulations (excluding drunk driving, reckless driving and speeding violations).

(b) The background statement shall be set forth in DRE Form 212 and shall inquire only about the information to be disclosed pursuant to subdivision (a). The background statement must be

³ Regulation 2746 refers to California Code of Regulations, title 10, section 2746

verified and completed by each corporate officer, director or stockholder as named in subdivision (a) to the fullest extent of the signatory's actual knowledge.

(c) Whenever there is a change in the person whose background statements are required to be on file with the Department for a corporate licensee pursuant to subdivision (a) or an addition to the persons required to file statements pursuant to subdivision (a), the designated officer of the corporation shall, within 30 days thereafter file with the Department a background statement of information for each new or changed person.

13. A. On the corporate real estate broker license application for MOOLX, MOFS, and HAI, the broker-officer applicant certified that he had read and understood the provisions regarding regulation 2746. The respective broker-officer applicant of MOOLX, MOFS, and HAI also checked a box on each application signifying agreement to the following statement: "I also certify that a Corporation Background Statement (RE 212) is not needed for any officers or persons owning or controlling more than ten percent of the corporation shares including myself."

B. The statements by MOOLX, MOFS, and HAI on their respective corporate real estate broker license applications, to the effect that a Corporation Background Statement is not needed for any officers, were false. Respondent Lee was and is the CEO of MOOLX; the CEO, Secretary, and CFO of MOFS; and CFO and Director of HAI. Consequently, a Corporation Background Statement was required for respondent Lee due to his history of criminal convictions, disciplinary actions from the Department, and the federal court order restraining him from conducting certain businesses involving securities. However, MOOLX, MOFS, and HAI did not file any such Corporation Background Statement with their corporate real estate broker applications.

Mitigation/Rehabilitation

14. Although counsel for MOOLX, MOFS, and HAI appeared at the administrative hearing, no mitigation or rehabilitation evidence was presented.

15. As described above, respondent Lee did not appear at the administrative hearing, and no mitigation or rehabilitation evidence was presented on his behalf.

Cost Recovery

16. In the matter of the Accusation against MOOLX, MOFS, and HAI, complainant submitted evidence of the costs of investigation and enforcement of this matter, summarized as follows: 48.15 hours in investigation activities by three Department employees at rates ranging from \$62 to \$80 per hour (subtotal \$2,989.80); and 35.75 hours of

legal services at the rate of \$89 per hour (subtotal \$3,181,75). The total costs of investigation and enforcement are \$6,171.55. These costs are reasonable.

LEGAL CONCLUSIONS

The Accusation against MOOLX, MOFS, and HAI

1. The standard of proof for the Department to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)
2. Cause exists to suspend or revoke the corporate real estate broker licenses of MOOLX, MOFS, and HAI pursuant to Business and Professions Code section 10177, subdivision (a), on the grounds that respondents procured their real estate licenses by fraud, misrepresentation, or deceit or by making a material misstatement of fact in their applications, as set forth in Factual Findings 7 through 13.
3. In the most recent case construing Business and Professions Code section 10177, subdivision (a), the Court of Appeal held that for a real estate license to be "procured" by misrepresentation, the omission on the application must be both willful and material. (*Madrid v. Department of Real Estate* (1984) 152 Cal. App.3d 454, 460.) An omission is willful if it was not made in good faith. (*Ibid.*) An omission of a criminal conviction is material if the conviction is neither minor nor remote in time, and if the conviction had been disclosed, the license would not have been granted. (*Id.* at pp. 459-460.) A showing that the underlying crime bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee is sufficient to satisfy the final requirement. (*Id.* at p. 460.) Taking into consideration these factors, the court in *Madrid* found that the appellant, who failed to disclose a five-year-old bingo fraud conviction and claimed he just "plumb forgot" to disclose it in his application, violated Business and Professions Code section 10177, subdivision (a), by making a material misstatement of fact in his application. (*Ibid.*)
4. Here, as set forth in Factual Findings 7 through 13, complainant presented clear and convincing evidence that MOOLX, MOFS, and HAI failed to disclose material information on their respective corporate real estate broker license applications. Respondent Lee is an officer and/or director of all three entities. During the preceding 10 years, the federal district court issued a final judgment against respondent Lee that permanently restrained and enjoined him from conducting certain business involving securities. Respondent Lee's application for a conditional real estate salesperson license was denied due to prior felony convictions for grand theft and a misdemeanor conviction for carrying a loaded firearm. In another disciplinary action, respondent Lee admitted to engaging in real

estate activities while he was unlicensed. Furthermore, in 2013, respondent Lee was convicted of forgery, a crime which is substantially related to the qualifications, functions, or duties of a licensee pursuant to California Code of Regulations, title 10, section 2910, in that the conviction involved counterfeiting, forging or altering of an instrument or the uttering of a false statement.

5. These were all instances of misconduct that required disclosure by MOOLX, MOFS, and HAI through a Corporation Background Statement pursuant to California Code of Regulations, title 10, section 2746. Any of these offenses, had it been disclosed, would have provided a basis for the denial of the corporate real estate broker license. Thus, the failure of MOOLX, MOFS, and HAI to disclose respondent Lee's prior misconduct and license discipline history on a Corporation Background Statement as a part of their corporate real estate broker license applications constituted a material omission. Although MOOLX, MOFS, and HAI was represented by counsel at the administrative hearing, no evidence was presented to justify the omission of this material information from their license applications.

6. The purpose of a disciplinary matter is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) However, none of the respondents presented any evidence of mitigation or rehabilitation. In addition, honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." (*Id.* at p. 402.) "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." (*Ibid*; *Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.) The failure of all three corporate entities to disclose respondent Lee's background information demonstrates a level of dishonesty that does not bode well on their abilities to carry out their duties as real estate licensees. Under these circumstances, the protection of public interest, health, and welfare requires the revocation of the corporate real estate broker licenses of MOOLX, MOFS, and HAI.

7. Pursuant to Business and Professions Code section 10106, the Department may recover costs "not to exceed the reasonable costs of the investigation and enforcement" of the matter of the Accusation against MOOLX, MOFS, and HAI. As set forth in Factual Finding 16, the reasonable costs of investigation and enforcement amount to \$6,171.55. for which MOOLX, MOFS, and HAI shall be jointly and severally responsible.

8. Given the nature of the order below, it would be unnecessarily punitive to require MOOLX, MOFS, and HAI to pay the Department's costs at this time. However, it is reasonable to require them to pay their share of recovery costs upon reinstatement of their licenses.

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The Bar Order Against Respondent Lee

9. Business and Professions Code section 10087 states, in relevant part:

In addition to acting pursuant to the authority provided under Sections 10086, 10176, and 10177, the commissioner may, after appropriate notice and opportunity for a hearing, by order, suspend, bar from any position of employment, management, or control, or bar from participation in an examination for licensure, for a period not exceeding 36 months, a real estate salesperson or real estate broker, or an unlicensed person issued an order under Section 10086, if the commissioner finds either of the following:

(1) That the suspension or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the public.

10. Respondent Lee has sustained a history of criminal convictions and disciplinary actions from the Department. He has also been restrained and enjoined by the federal court from conducting certain activities involving securities. Although respondent Lee is not licensed in any capacity by the Department, he continues to engage in real estate activities by maintaining a position as an officer of MOOLX, MOFS, and HAI. Engaging in these real estate activities without a real estate license constitutes violations of Real Estate Law that should have been known by respondent Lee.

11. Respondent Lee did not appear at the administrative hearing and did not present any mitigation or rehabilitation evidence. Under these circumstances, the issuance of a bar order against respondent Lee for a period of 36 months is appropriate and in the public interest.

ORDER

The Accusation against Market Order Open Listings Xchange Inc., Market Order Financial Services Inc., and Homentum Acquisitions International, Inc.

1. All licenses and licensing rights of respondent, Market Order Open Listings Xchange Inc., under the Real Estate Law are revoked.

2. All licenses and licensing rights of respondent, Market Order Financial Services Inc., under the Real Estate Law are revoked.

3. All licenses and licensing rights of respondent, Homentum Acquisitions International, Inc., under the Real Estate Law are revoked.

4. As a condition precedent to any reinstatement of their licenses under the Real Estate Law, respondents Market Order Open Listings Xchange Inc., Market Order Financial Services Inc., and Homentum Acquisitions International, Inc., shall jointly and severally, pay the Department's investigation and enforcement costs of \$6,171.55, at such time and in such manner as the Department may direct.

The Bar Order Against Christopher Mark Lee, aka Rashid Khalfani aka R.K. Khalfani aka Rashid Khalid Khalfani aka Richard Khalfani

Respondent Christopher Mark Lee, aka Rashid Khalfani aka R.K. Khalfani aka Rashid Khalid Khalfani aka Richard Khalfani, is barred and prohibited for a period of thirty-six (36) months from the effective date of this Order from engaging in any of the following activities in the State of California:

- (a) Holding any position of employment, management, control, or ownership in a real estate business;
- (b) Participating in any business activity of a real estate salesperson or real estate broker;
- (c) Engaging in any real estate related business activity on the premises where a real estate salesperson or real estate broker is conducting business; and
- (d) Participating in any real estate related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company.

DATED: April 9, 2019

DocuSigned by:
Ji-Lan Zang
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JI-LAN ZANG
Administrative Law Judge
Office of Administrative Hearings