

FILED

OCT 25 2021

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:)	DRE No. H-41976 LA
RAFAEL L. VALENZUELA,)	OAH No. 2021060261
Respondent.)	

DECISION

The Proposed Decision dated September 13, 2021 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 endorsement is denied, but the right to a restricted mortgage loan originator endorsement is granted to Respondent.

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.

If and when a petition for removal of restrictions is filed, all competent evidence

of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on NOV 24 2021

IT IS SO ORDERED 10.20.21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues against:

RAFAEL L. VALENZUELA,

Respondent.

Agency Case No. H-41976 LA

OAH No. 2021060261

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter remotely by video and teleconference on July 27, 2021.

Kevin H. Sun, Counsel, represented complainant Luke Martin, Supervising Special Investigator, Department of Real Estate (Department).

Mark S. Martinez, Attorney at Law, represented respondent Rafael L. Valenzuela, who was present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 27, 2021.

SUMMARY

Complainant argues that respondent's application for a mortgage loan originator (MLO) license endorsement should be denied based on respondent's alleged failure to disclose on his application unsatisfied civil judgments or liens against him, and alleged failure to disclose the Department's prior denial of licensure and eventual issuance of a restricted license based on respondent's criminal convictions (which he also failed to disclose), all demonstrating a lack of good character and general fitness. Respondent offered evidence of mitigation and rehabilitation. As discussed below, respondent established that his application should be granted, but that a restricted endorsement should issue.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On September 8, 2010, the Department denied respondent's application for a salesperson license; a Statement of Issues was filed in case no. H-36655 LA, and respondent defaulted.
2. On May 28, 2013, the Department denied respondent's subsequent application for a salesperson license; a Statement of Issues was filed in case no. H-38898 LA. By Stipulation and Agreement effective June 6, 2013, the Department issued respondent a restricted license, number S/01871870. The license was affiliated with responsible broker G. W. Golden Enterprises, Inc., in Costa Mesa on August 12, 2019. Respondent renewed his license every four years. The most recent scheduled license expiration date, June 6, 2021, was extended until June 30, 2021, in accordance with

Governor Newsom's Executive Order No. N-83-20. Respondent testified he renewed his license before it expired on June 30, 2021. The parties introduced no documentary evidence of the status of respondent's licensure after June 30, 2021.

3. On July 24, 2020, respondent applied to the Department for an individual mortgage loan originator (MLO) license endorsement by filing an application form, "Form MU4," through the Nationwide Mortgage Licensing System and Registry (NMLS) online, under identification number 1912637.

4. Complainant filed the Statement of Issues in this matter in his official capacity, alleging grounds exist to deny respondent's MLO endorsement application. On May 4, 2021, respondent timely filed a notice of defense and requested a hearing.

Respondent's Application for an MLO Endorsement

5. An MLO license endorsement from the Department allows the holder to accept compensation to take a residential mortgage loan application from a consumer and negotiate residential mortgage loan terms with lenders. The MLO's employer company must hold a California Residential Mortgage Lending Law Act (CRMLA) license or a California Finance Lender license under the California Financing Law.

6. To apply for an MLO license endorsement, the applicant must create an account with the NMLS, submit an application, complete 20 hours of pre-licensing education, pass a national test, take eight hours per year of courses in state and federal laws, ethics, loan products, and other subjects, and submit to and pass a credit check and background check.

7. Respondent completed, signed, and submitted a Form MU4.

8. The Form MU4, at question D in the "Disclosure" section, under the heading, "Financial Disclosure," asks, "Do you have any unsatisfied judgments or liens against you?" (Ex. 5, p. 21.) Respondent answered "No."

9. The Form MU4, at question K in the "Disclosure" section, under the heading, "Regulatory Disclosure," asks,

Has any state or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever:

(1) found you to have made a false statement or omission or been dishonest, unfair or unethical? [] . . . []

(6) denied or suspended your registration or license or application for licensure, disciplined you, or otherwise by order, prevented you from associating with a financial services-related business or restricted your activities?

(Ex. 5, p. 22.) Respondent answered "No" to questions K(1) and K(6).

QUESTION D: UNSATISFIED JUDGMENTS OR LIENS AGAINST RESPONDENT

10. Respondent believed, when he completed the Form MU4, that there were no unsatisfied judgments or liens against him, and that his answer to Question D was truthful. The evidence supports respondent.

11. Respondent filed for Chapter 7 bankruptcy in March, August, and October 2016, in the United States Bankruptcy Court in San Bernardino. (Ex. C, pp. 25, 36, 38, 42.) The bankruptcy court dismissed the March and August cases, nos. 6:16-bk-

11932-WJ and 6:16-bk-17459-WJ, respectively, due to respondent's attorney filing incomplete paperwork. (Ex. C, pp. 38, 42.) After the October 2016 filing, the bankruptcy court issued an Order of Discharge—Chapter 7 in case no. 6:16-bk-19559-WJ, dated February 6, 2017, discharging judgments and liens against respondent. (Ex. C, pp. 36-37.) Respondent believed, based on what his attorney at the time told him, that the bankruptcy court order discharged all his debt, including outstanding civil judgments against him.

12. Respondent informed the Department of the discharge in bankruptcy in his Form MU4 application. The Form MU4, at question A(1) in the "Disclosure" section, under the heading, "Financial Disclosure," asks, "Have you filed a personal bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past 10 years?" (Ex. 5, p. 21.) Respondent truthfully answered "Yes."

13. To verify for himself the effect of the bankruptcy court order and confirm there were no unsatisfied judgments or liens against him when he completed the Form MU4 application, respondent generated an Experian credit report on July 8, 2021. In the sections entitled, respectively, "Collection Accounts" and "Financial History," the report identified no unsatisfied judgments. (Ex. C, pp. 8-37.)

14. Further, complainant introduced evidence that, on March 19, 2018, a judgment creditor filed an Application for and Renewal of Judgment, attempting to enforce a 2008 civil judgment against respondent in *Carrillo v. Valenzuela* (Super. Ct. Riverside County, 2005, No. 449295.) Respondent testified that he mailed the creditor his Chapter 7 order of discharge and the creditor ceased pursuing the renewal of judgment. Respondent knows of no other attempts to collect on any civil judgment against him.

QUESTIONS K(1) AND (6): PRIOR AGENCY FINDINGS OF DISHONESTY AND AGENCY RESTRICTING RESPONDENT'S ACTIVITIES

15. Question K(1) confused respondent. It asked whether an agency had ever found him to be dishonest. Respondent was issued a restricted license based on, he believed, his prior criminal convictions. Any "finding of dishonesty" was based on his omission of some of his criminal convictions in his license application. Respondent testified he was not trying to conceal any convictions on his application and disclosed all he could remember. Corroborating to some degree respondent's testimony that his failure to disclose all his convictions was inadvertent is the fact that, in a September 2020 Interview Information Statement respondent submitted to the Department, he identified all the criminal convictions, including the convictions he had omitted on his Form MU4 application.

16. Respondent also explained that he believed he was answering question K(6) correctly. Respondent completed the MU4 application online in his home office on July 24, 2020. He did not understand all the words used in the application and relied on Google to find their definitions. He found some of the questions confusing, especially question K(6), because of all its disjunctive clauses and because some of the language was unclear.

17. Respondent's confusion with respect to question K(6) is understandable in view of the question's structure. (See Factual Finding 9, *ante*.) Respondent knew he did not have a suspended license; he knew his license had never been disciplined. But the question also asked whether the Department or any agency had "restricted your activities," not whether an agency had issued him a restricted license. (Ex. 5, p. 22.) Respondent's understanding of his restricted salesperson license, issued in accordance with a Stipulation and Waiver in case no. H-38898 LA. (Ex. C, pp. 43-47), is that his

activities as a salesperson are not restricted, and that he can still represent individuals in buying and selling homes. Rather, the license restriction consists of a requirement that he have additional supervision and that he must disclose the license status to his employing broker. Respondent's is a reasonable interpretation of the operation of the restricted license.

18. One clause of Question K(6) asks whether respondent had ever been denied a license. The Department denied respondent's first license application for failure to identify all criminal convictions, and respondent defaulted on a statement of issues in September 2010. The Department denied respondent's second license application in 2013, but then issued a restricted license after filing a statement of issues and reaching a stipulated settlement with respondent.

19. As to the 2010 denial and default, respondent testified he was working on a project and forgot all about the hearing until two days after the hearing date. With respect to the 2013 denial and statement of issues, respondent agreed and stipulated with the Department that there were grounds to deny an unrestricted license, based on his criminal convictions. Respondent's "no" answer, while not correct taken in isolation, is justifiable in the context of the overall confusion engendered by the complexity of the question.

DEPARTMENT INVESTIGATION

20. Respondent's broker suggested he apply for an MLO license endorsement, telling respondent he has an excellent personality for selling reverse mortgages and that respondent's business would increase with the endorsement. Respondent considered the suggestion for some months and then applied. He studied

for four to five months, took classes at a licensing school, took all the practice tests, and finally took and passed the exam.

21. Department investigator Shannon Boyd was assigned to investigate respondent's application. She sent a package of documents for respondent to complete, sign, and return. When respondent complied, Ms. Boyd asked for additional information, which respondent provided. Ms. Boyd did not tell respondent why the Department was investigating him; he assumed it was because of his criminal record, which was the issue when he first applied for his real estate salesperson license.

22. On his Interview Information Statement dated September 11, 2020, respondent listed all his convictions. He also readily disclosed that he had a restricted license: "I already have a restricted Real Estate license. If this also apply [*sic*] to my NMLS license I'm ready to waive my rights to receive this license. As you can see in the 7 years that I have the R.E. license it [*sic*] has been NO complains [*sic*] or claims against [*sic*] my person and or my license." (Ex. E, p. 6.)

23. Respondent filled out the Form MU4 application to the best of his ability. He was, in fact, truthful in answering "no" to section K(1), and in answering "no" to K(6), respondent attempted to be truthful but did not understand the question. In his September 2020 application, respondent disclosed all his convictions and the restricted status of his license. To help assess respondent's testimony that some of the Form MU4 questions were difficult for him because of his English language limitations, complainant elicited testimony that respondent took several classes over the course of several months to prepare for the Department's salesperson exam in 2013. All the classes were in English; respondent passed them all, including practice exams, and he passed the salesperson license exam, which was in English. Respondent has had to take nine different continuing education classes, totaling 45 hours, every four years to

renew his salesperson license. Respondent has renewed his license twice. All the classes and exams were in English. Respondent also obtained a California contractor's license, for which he had to pass an examination, also in English.

24. But unlike the Form MU4 application, before taking his contractor's license examination and real estate license examination, respondent was able to review materials and take practice tests over the course of many months. He was able, on the practice tests he took, to compare his answers to the right answers. Even so, and despite considerable effort, he never scored 100 percent. There were always many words he did not understand, and he had to use a dictionary or Google to try to comprehend the practice test questions.

Other Mitigation and Rehabilitation

25. Evidence of mitigation and respondent's rehabilitation was uncontradicted and internally consistent, was supported by documentation and by the testimony of his employer, and is generally credited.

26. Respondent immigrated to the United States in around 1972, when he was 15 years old. Respondent was unable to speak English and did not attend school in the United States. Instead, he started working at a carpentry job, building furniture. Respondent learned English to obtain better job opportunities by listening to English being spoken, watching television, and reading newspapers.

27. From 2014 to June 2019, respondent worked for Realty One Group Champions as a real estate agent. In 2018, the company changed its name to Better Homes & Gardens RE Champions. Respondent worked as a member of a team. The team leader was responsible for all the sales. Group members did not personally sell real estate. They engaged in cold calling, door knocking, advertising, and other tasks

assigned by the team leader. Respondent conducted all his activities in English. Most or all of respondent's writing in evidence contains numerous misspellings.

28. From June 2019 to the present, respondent has worked for 1st Platinum Realty. Respondent's wife, two of his five children, and a son's girlfriend also work at 1st Platinum Realty. Respondent still does not sell real estate. He obtains leads for property "flips," and turns the leads over to his wife or his children.

29. No consumer complaints have been filed against respondent in his seven years of licensure.

30. Greg Weber, respondent's broker of record at GW Goldman Enterprises, Inc., doing business as 1st Platinum Realty, wrote a character reference letter for respondent and testified at hearing. Mr. Weber hired respondent two years ago, and is the designated officer of 1st Platinum. He enjoys working with respondent and his family members. No client has ever lodged a complaint with 1st Platinum Realty about respondent. Respondent has never appeared to Mr. Weber to be dishonest; Mr. Weber characterized respondent as outgoing, warm, and friendly. Mr. Weber is aware of respondent's restricted salesperson license and read the Stipulation and Waiver in the Department's statement of issues case leading to the stipulation. Mr. Weber was unsure of the details of some of respondent's criminal convictions.

31. Respondent has had a general contractor license in California since April 1995. He took two years of classes to obtain the license; the classes were in English, which respondent had difficulty understanding, but he passed the classes and the licensing examination. He had no difficulty getting work experience to obtain the license, as he has worked in construction all of his adult life. Respondent also formed a corporation, which has a general building contractor license since June 2018. For that

corporation, respondent supervises projects to make sure jobs are completed on time. The corporation has no employees; usually, respondent and his children do the work and hire subcontractors when needed. Respondent uses English-language construction contracts for his jobs.

32. Respondent has volunteered in his community. Respondent knew a family that had a homeless son. Respondent allowed the boy to live with his family in his home, where the boy remained for two to three years. The Department of Social Services visited and helped with food and other items. Respondent received no money for his service. Respondent is still in contact with the boy, now a man, who went to college after living with respondent's family. A December 8, 2009, letter from Erin Hebert, a social worker, corroborated respondent's testimony. (Ex. D.)

33. Respondent demonstrated that he attempted to be truthful in his MU4 license endorsement application. He believed there were no outstanding judgments or liens against him, and he had a defensible basis for that belief. He believed the Department did not restrict his activities as a real estate salesperson, and the Stipulation and Waiver in accordance with which the Department issued respondent a restricted salesperson license supports his understanding.

34. Nevertheless, with an unrestricted MLO endorsement respondent would have access to private consumer information that he must be able to correctly communicate and disclose. His language abilities are in some ways limited, and he requires assistance in comprehending complicated documents. For that reason, the public safety and welfare will be best protected by issuing respondent a restricted MLO license endorsement, with appropriate terms and conditions.

35. Respondent accepted that the restriction on his salesperson license was appropriate and is willing to accept a restricted MLO endorsement. He has worked to improve himself, avoided the criminal justice system (his last criminal conviction was eight years ago, and the conviction before that was 18 years ago), and supported his family and members of his community.

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. To engage in business as a mortgage loan originator, a real estate broker or salesperson must maintain licensure and obtain an MLO license endorsement. (Bus. & Prof. Code, § 10166.02, subd. (b).)

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. The commissioner shall deny a mortgage loan originator endorsement to an applicant unless the commissioner finds that the applicant (a) has never had an MLO license endorsement revoked, (b) has not been convicted of a felony in the seven years prior to the application, or ever if the felony involved fraud, (c) "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;" and (d) has complied with applicable education and testing requirements. (Bus. & Prof. Code, § 10166.05, subs. (a) through (d).)

5. The applicant has the burden of proof to show he meets the qualifications for issuance of an MLO license endorsement. (Gov. Code, § 11504.) The standard of proof is the preponderance of the evidence. (Evid. Code, § 115.)

6. Cause exists to deny respondent's application for an MLO license endorsement under Business and Professions Code section 10166.051, subdivision (b), because his incorrect answers to certain questions in his application for an MLO license endorsement constitute material misstatements, as set forth in Factual Findings 5 through 24.

7. Cause does not exist to deny respondent's application for an MLO license endorsement under Business and Professions Code section 10166.05, subdivision (c), as set forth in Factual Findings 5 through 35. The evidence, on the whole, does not reflect a lack of financial responsibility, character, and general fitness sufficient to command confidence that he would operate honestly if he were issued an MLO license endorsement.

8. Cause for denial of respondent's application having been established, respondent bears the burden of proving sufficient mitigation and rehabilitation 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.)

9. Pertinent criteria for assessing the rehabilitation of a license endorsement applicant include whether at least two years have passed since respondent's most recent substantially related act warranting denial, whether at least seven years have passed since respondent's last felony conviction or whether respondent was ever criminally convicted of a felony based on fraud, any restitution respondent has made for any substantially related wrongful act, successful completion of criminal probation, payment of fines imposed in connection with a criminal conviction, stability of family life and fulfillment of familial responsibilities, completion of educational courses taken for economic self-improvement, correction of business practices resulting in injury to others, involvement in community programs designed to provide social benefits, and other evidence of rehabilitation. (Cal. Code Regs., tit. 10, § 2911.)

10. Applying the rehabilitation criteria, in respondent's favor are that his license has not previously been disciplined by the Department, there is no evidence that he suffered a fraud conviction within the seven years prior to his application, he apparently has a stable family life and, with his family, volunteered to house and support a needy youth. On the other hand, the most recent substantially related act respondent committed was to make material misstatements on his Form MU4 endorsement application. Respondent has presented sufficient evidence of mitigation and rehabilitation to overcome that error and to justify granting his application for an MLO license endorsement in the public interest, so long as the endorsement is restricted, based on Factual Findings 5 through 24 and Legal Conclusions 1 through 7.

ORDER

The application of respondent Rafael L. Valenzuela for an MLO license endorsement under the Real Estate Law is denied; provided, however, a restricted MLO license endorsement shall be issued to respondent under Business and Professions Code section 10156.5 if respondent pays to the Department the appropriate fee for the restricted endorsement within 90 days from the effective date of this Decision.

It is an express condition precedent to the issuance of a restricted MLO license endorsement that respondent first obtain renewal of his expired salesperson license, if it has not already been renewed as of the date of this Decision, or issuance of a new salesperson license, whether restricted or unrestricted. The restricted endorsement issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted MLO license endorsement issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted MLO license endorsement issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted MLO license endorsement nor for the removal of any of the conditions, limitations, or restrictions of a restricted MLO license endorsement until two years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted MLO license endorsement; and


(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which an MLO real estate license endorsement is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted MLO license endorsement until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real

Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent 's arrest, the crime for which respondent was arrested, and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted MLO license endorsement and shall be grounds for the suspension or revocation of that license endorsement.

DATE: 09/13/2021


Howard W. Cohen (Sep 13, 2021 09:37 PDT)
HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings