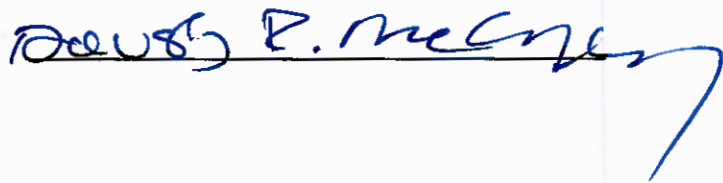


Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 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 JAN 24 2022.

IT IS SO ORDERED 12.20.21.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, appearing to read "Douglas R. McCauley", is written over a horizontal line. The signature is stylized and extends to the right with a long, sweeping tail.

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

In the Matter of the Statement of Issues Against:

CHANTE LEMON EARL, Respondent

Agency Case No. H-42061 LA

OAH No. 2021090093

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 13, 2021 by videoconference.

Julie L. To, Staff Attorney, represented Ruth Corral (complainant), a Supervising Special Investigator of the State of California.

Chante Lemon Earl (respondent) represented himself.¹

Testimony and documents were received as evidence. The record closed and the matter was submitted for decision on October 13, 2021.

¹ For reasons not established by the record, the Statement of Issues alleges respondent is also known as Thomas Smith.

STATEMENT OF THE CASE

Respondent has held a restricted real estate salesperson's license since 2006. In May 2020, respondent applied for a real estate mortgage loan originator (MLO) license endorsement, which the Department of Real Estate (Department) has not granted.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 29, 2020, respondent submitted, under penalty of perjury, an online individual application (application) to the Nationwide Multistate Licensing System and Registry (NMLS) for a real estate mortgage loan originator (MLO) license endorsement.
2. Respondent's application for a MLO license endorsement has not been granted.
3. On July 6, 2021, respondent filed a Notice of Defense, which requested a hearing on the allegations stated in the Statement of Issues.
4. On July 7, 2021, complainant filed the Statement of Issues in her official capacity.
5. All jurisdictional requirements have been met.

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Respondent's Application for MLO License Endorsement

6. In his application, in the section regarding Financial Disclosure, Question (A)(1) states: "Have you ever filed a personal bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past 10 years?" Respondent answered "No" and did not disclose his 2011 bankruptcy discharge.

7. In his application, also in the section regarding Financial Disclosure, Question (A)(3) states: "Have you been the subject of a foreclosure action within the past 10 years?" Respondent answered "No" and did not disclose a 2011 foreclosure action against his residence property.

8. In his application, in the section regarding Regulatory Action, Question (K)(6) states: "Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization ever 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?" Respondent answered "No" and did not disclose his disciplinary history with the Department.

Respondent's License History with the Department

9. Respondent's application for a real estate salesperson's license, filed May 24, 2005, was initially denied by the Department because respondent had suffered criminal convictions substantially related to the duties, qualifications, and functions of a real estate licensee. Respondent then requested a hearing.

10. On September 28, 2006, in Department Case No. H-32628 LA, OAH Case No. L2006050505, respondent's real estate salesperson license application was denied, but respondent was granted the right to a restricted license. (See Exhibit 3.)

11. On November 21, 2006, the Department issued restricted real estate salesperson license ID 01504105 to respondent. The license is active and will expire on November 15, 2024, unless renewed. Respondent has not attempted to obtain an unrestricted license because respondent is employed and the license restrictions have not hindered him professionally.

12. The Department's Decision and the Proposed Decision in Case No. H-^{LA}32628 are incorporated by reference in this Proposed Decision.

Respondent's Criminal Convictions

13. On March 10, 1997, in the United States District Court for the Southern District of California, in Case Number 95-1839-B, respondent was convicted, upon the Court's guilty finding, of violating six counts of United States Code, title 18, section 1343 (wire fraud) and section 2 (aiding and abetting), all felonies.

14. On March 31, 1997, in the United States District Court, Southern District of California, in Case Number 95-2076-T, respondent was convicted, upon his guilty plea, of violating United States Code, title 18, section 371 (conspiracy to commit wire fraud), section 1343 (wire fraud) and section 2 (aiding and abetting), both felonies.

15. On April 3, 1997, in the Ninth District Court for the State of New Mexico, County of Curry, in Case Number CR-96-12609, respondent was convicted, upon his guilty plea, of violating New Mexico Statutes Annotated, sections 30-28-2 and 30-16-6 (conspiracy to commit fraud in excess of \$250), a felony.

16. All of respondent's convictions were the result of his employment at a telemarketing company that was using illegal selling practices.

Respondent's Bankruptcy

17. On October 6, 2010, in the United States Bankruptcy Court, Central District of California, in Case Number 6:10-bk-42428-SC, respondent and his wife filed a Bankruptcy Petition pursuant to Chapter 7 for consumer debts, defined by United States Code, title 11, section 101, subdivision (8). On April 5, 2011, the bankruptcy discharge was granted, and the case terminated on April 8, 2011.

Respondent's Foreclosure

18. On August 31, 2011, in San Bernardino County, California, a Notice of Trustee's Sale dated August 29, 2011, Trustee Sale No. 20110015003037 was recorded (Doc #2011-0366564) with respect to a public auction set for September 29, 2011, at 12:00 P.M. at the San Bernardino County Courthouse for the sale of real property located at 6668 Robinson Rd., Highland, California, 92346.

19. The Notice informed respondent and his wife that they were in default under a deed of trust dated November 17, 2005, and that unless action was taken to protect the subject property, said property may be sold at public sale.

20. On October 18, 2011, a Trustee's Deed upon Sale, Trustee Sale No. 20110015003037 was recorded with respect to the sale of the subject property, pursuant to the powers conferred by the November 17, 2005 deed of trust executed by Respondent and co-debtor.

Respondent's Evidence

21. Respondent has been married to the same person for approximately 30 years. Together, they have raised five children. Respondent has been gainfully employed as a real estate salesperson since 2006. He has had no disciplinary issues with the Department since obtaining his real estate salesperson's license. Respondent did not disclose his foreclosure or bankruptcy in his application because he believed they had both occurred more than 10 years ago. Respondent did not disclose the fact that his application for real estate salesperson's license was initially denied by the Department because he felt the question was asking about any discipline imposed after the date his license was issued.

LEGAL CONCLUSIONS

Applicable Law

1. Pursuant to Business and Professions Code 10166.05, subdivision (b)(1), the Real Estate Commissioner "shall not issue a license endorsement to act as a mortgage loan originator to an applicant" if "at any time preceding the date of application" the applicant committed a felony which involved an act of fraud, dishonesty, a breach of trust, or money laundering.

2. Pursuant to California Code of Regulations (CCR), title 10, section 2945.3, 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. This restriction constitutes a ban on the real estate licensee's ability to apply for a license endorsement. This restriction is not subject to mitigation or rehabilitation.

3. Business and Professions Code section 10166.051, subdivision (b), states, in pertinent part, "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."

4. The plain language of Business and Professions Code section 10166.05, subdivision (b)(1), and CCR, title 10, section 2945.3, clearly states that the commissioner does not have discretion to issue a MLO license endorsement if respondent has previously suffered felony convictions involving fraud or dishonesty.

Causes for Discipline


5. Cause exists, pursuant to Business and Professions Code 10166.05, subdivision (b)(1), to deny respondent's application for a MLO license endorsement because respondent has suffered 10 felony criminal convictions (wire fraud, conspiracy to commit wire fraud, and conspiracy to commit fraud in excess of \$250), all of which involved fraud or dishonesty. The statute requires the Department to deny respondent's application. Further, the statute states that mitigation or rehabilitation evidence may not be considered.

6. Cause exists, pursuant to Business and Professions Code section 10166.051, subdivision (b), to deny respondent's application for MLO license endorsement, because respondent failed to disclose a foreclosure against his real property, his bankruptcy filing, and the denial of his real estate salesperson application for licensure in his application for MLO endorsement.

ORDER

Respondent Chante Lemon Earl's application for a real estate mortgage loan originator license is denied.

DATE: 11/08/2021


Christopher Ruiz (Nov 8, 2021 13:25 PST)
CHRIS RUIZ

Administrative Law Judge

Office of Administrative Hearings