

BEFORE THE
DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

In the Matter of the Statement of Issues of:

THE CALIFORNIA CORPORATIONS
COMMISSIONER,

Complainant,

DOUGLAS ALAN RAUH,

Respondent.

Case No.: 11738 & NMLS 3296

OAH No.: 2012080604

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on January 17, 2013 .

IT IS SO ORDERED January 17, 2013 .

COMMISSIONER OF CORPORATIONS

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ERRATA SHEET

(Changes to Proposed Decision – Douglas Alan Rauh)

- 1) On page 1 of the proposed decision, first paragraph of the Factual Findings, line 1, insert “Act” after “Mortgage Licensing”.
- 2) On page 3 of the proposed decision, paragraph number 9 of the Factual Findings, line 1, delete “accusation” and insert “Statement of Issues”.

BEFORE THE
DEPARTMENT OF CORPORATIONS
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In the Matter of the Statement of Issues of:

THE CALIFORNIA CORPORATIONS
COMMISSIONER,

Complainant,

v.

DOUGLAS ALAN RAUH,

Respondent.

OAH No. 2012080604

PROPOSED DECISION

Administrative Law Judge Amy C. Yerkey, State of California, Office of Administrative Hearings, heard this matter on November 19, 2012, in Los Angeles, California.

Afsaneh Eghbaldari, Corporations Counsel, represented Jan Lynn Owen, California Corporations Commissioner (Complainant), for the Department of Corporations (Department).

Fredrick Ray represented Douglas Alan Rauh (Respondent).

The matter was submitted for decision on November 19, 2012.

FACTUAL FINDINGS

Procedural History

1. The Secure and Fair Enforcement for Mortgage Licensing, a federal law passed in 2008, required Respondent to obtain a license in order to work as a mortgage loan originator.

2. On August 11, 2011, Respondent applied for a license as a mortgage loan originator (MLO). Complainant proposed to deny the license, and this proceeding followed.

Respondent's Prior Disciplinary Actions

3. In 2005, the National Association of Securities Dealers (NASD), now known as the Financial Industry Regulatory Authority (FINRA), barred Respondent from association with any member firm in any capacity for multiple violations, and fined him \$118,495.

4. The underlying conduct which led to this discipline was as follows: Respondent willfully failed to disclose material information on his Form U-4 (Uniform Application for Securities Industry Regulation form); specifically, he did not inform a potential employer that he had been accused of investment fraud by a former customer. In addition, Respondent exercised discretion over customers' accounts without written authorization, and made unsuitable recommendations on accounts.

5. Respondent currently holds a restricted salesperson license from the Department of Real Estate (DRE). He applied to obtain a broker's license; however the DRE filed a statement of issues seeking denial of his application. Respondent entered into a stipulated settlement by which he received his restricted salesperson license. Respondent also applied for an MLO license from the DRE, and the DRE currently has a statement of issues pending to deny Respondent's application. The DRE has also recently filed an accusation to revoke Respondent's restricted salesperson license, based on discipline imposed by the Department of Insurance, explained below.

6. Respondent previously held licensure as a life and disability agent from the Department of Insurance (DOI). In February 2010, the DOI revoked Respondent's license, based on his failure to inform the DOI of the discipline imposed against him by NASD/FINRA, and on his willful omission of this information on his DOI license renewal application. In addition, after a hearing before an administrative law judge, it was determined that Respondent conducted business in a dishonest manner. Specifically, Respondent misrepresented the return that clients would receive on their investments, he did not accurately explain the earning structures of the annuity accounts in which they were investing, and he did not explain to the clients the discipline that he suffered from NASD/FINRA.

7. DiAun Burns (Burns), C.P.A., Special Administrator for the Department, testified at the hearing. Burns explained the background of the mortgage loan originator license requirement, which was due to federal regulation because of the nationwide mortgage crisis. Burns explained the criteria for obtaining a mortgage loan originator license, and the fact that after July 2010, Respondent was not permitted to originate mortgage loans without a license. Upon reviewing all of Respondent's disciplinary history, Burns opined that he was not a suitable candidate for an MLO license because he was not operating fairly and honestly.

8. Respondent testified at the hearing. Respondent has worked as a stock broker and financial advisor for over 20 years. He has no prior criminal record. Prior to the DOI revocation, he had never had any discipline imposed against him by the DOI or the Department of Corporations. Respondent contended that the discipline imposed by NASD/FINRA was

based on a one-time event, over an otherwise unblemished career. Upon close review of the record; however, Respondent's claim is belied by the evidence. As explained in great detail by the NASD decision dated November 9, 2005, and the DOI decision dated February 11, 2010, both of which are adopted as if set forth herein, allegations of Respondent's misconduct began in the mid-1990's and continued through 2006. The NASD and DOI decisions set forth egregious errors in Respondent's judgment. At the instant hearing, Respondent downplayed his misconduct. When asked what business practices Respondent has changed as a result of the aforementioned discipline, Respondent said he had learned that he must insist upon a written agreement when transacting business, but maintained that his practices were otherwise not in need of change. He cited passing audits from the Securities and Exchange Commission (SEC) in or around 2003 and 2004 as an example of his prior good business practices. Yet the record showed that several years later, in 2006, Respondent was again misrepresenting and withholding information from clients. Respondent claimed that he learned to disclose all relevant information to the agencies which govern his licensure, yet even in his initial application to the Department, he omitted information about prior discipline and liens against him. Although he later amended the application with the correct information, it was done at the behest of the Department.

9. Except as set forth in this Decision, all other allegations in the accusation and all other contentions by the parties lack merit or constitute surplusage.

LEGAL CONCLUSIONS

1. California Financial Code¹ sections 50301 and 50513 set forth the Commissioner's authority to revoke or suspend any license for cause as provided within the statutory framework.

2. Section 50141, subdivision (a)(3), states that the Commissioner shall not issue a license unless an applicant has "demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division."

3. Cause exists to deny Respondent's application for a license as a MLO, pursuant to Code sections 50301, 50513 and 50141, in that Respondent failed to demonstrate the requisite characteristics to warrant a determination that he would operate fairly, honestly and efficiently, by reason of factual finding numbers 3 through 8.

4. The evidence showed that Respondent does not possess the requisite good character necessary to meet the criteria of licensure. He has a repeated history of willful omissions to agencies which govern his licensure, and misrepresentation to his clients. Respondent's conduct is serious and recent, and raises significant doubts regarding his

¹ All further references are to the California Financial Code.

honesty and integrity. Accordingly, the order that follows is necessary for the protection of the public.

ORDER

The application by Respondent Douglas Alan Rauh for a mortgage loan originator license is denied.

DATED: December 17, 2012

AMY C. YERKEY
Administrative Law Judge
Office of Administrative Hearings