BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation Against: PMCC Mortgage Corp.	)	Case No. 413-0227 OAH No. L2001120470 **FINAL DECISION (AFTER REJECTION OF PROPOSED DECISION) AND ORDER REVOKING LICENSE**

I

PROCEDURAL HISTORY

This matter came on for hearing before Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, Los Angeles, California on February 21, 2002. Oral and documentary evidence was received and the matter was submitted on February 21, 2002.

Judy L. Hartley, Senior Trial Counsel appeared on behalf of the Department of Corporations (hereinafter "Department").

Howard K. Alperin, Attorney at Law appeared on behalf of PMCC Mortgage Corp (hereinafter, "PMCC").

On March 12, 2002, the Administrative Law Judge submitted a Proposed Decision, which was rejected by the California Corporations Commissioner on June 21, 2002. Pursuant to Government Code Section 11517(c)(2), PMCC was served with the Notice of Nonadoption of Proposed Decision, and was notified that the case would be decided by the California Corporations Commissioner upon the record, including the transcript of proceedings held on February 21, 2002, and upon any written argument offered by the parties. On July 12, 2002, PMCC submitted written argument to the California Corporations Commissioner. Judy Hartley, on behalf of the Department, submitted written argument on July 15, 2002.

II

PMCC'S WRITTEN ARGUMENT AND SUPPORTING DECLARATIONS

On June 21, 2002 the Commissioner of Corporations served a Notice of Nonadoption of Proposed Decision, advising the parties that in accordance with Government Code Section 11517(c)(2)(E)(ii) they may submit written argument to the Department on any matter they desired. The Notice of Nonadoption of Proposed Decision did not state that additional evidence may be submitted, but also did not preclude it. In its written argument submitted July 15, 2002, the Department requested that PMCC's written argument, and the supporting Declarations of Stephen J. Mayer and Michael H. Golland be stricken.

Under these unique circumstances and the authority provided under Government Code Section 11517(c)(2)(E), which states that the Department may decide the case upon the record, including the transcript, with or without taking additional evidence, the Commissioner of Corporations hereby makes the determination that it will consider PMCC's written argument, and the supporting Declarations of Stephen J. Mayer and Michael H. Golland.

II

FACTUAL FINDINGS

1. Demetrios A. Boutris, California Corporations Commissioner, filed the Accusation in his official capacity.

2. The Department issued residential mortgage lender license number 413 0227 to PMCC on July 1, 1998. PMCC is a subsidiary of PMCC Financial Corp (hereinafter the parent), which was organized in 1998 to own the stock of PMCC. Both are Delaware corporations headquartered in New York State.

3. The Department is charged with the duty to enforce the California Residential Mortgage Lending Act (the Act), passed by the Legislature and effective January 1, 1996. The Act provides for the licensure of persons or entities that engage in the business of making or

servicing residential mortgage loans in this state.[1] The Act also requires licensees to annually submit financial statements, independently audited, within 105 days of the end of the licensee's fiscal year, and authorizes the California Corporations Commissioner to reject any financial statement.[2] The Act further directs all licensees to file a Report of Principal Amount of Loans and Aggregate Amount of Loans Serviced report (hereinafter "Report of Loans and Loans Serviced") with the California Corporations Commissioner on or before March 1 every year, detailing the licensee's principal amount of loans and loans serviced during the preceding calendar year.[3]

4. Consolidated financial statements of a licensee's parent company that fail to include financial information specific to the licensee are not sufficient to comply with the Act. The licensee's financial information is necessary to assist the Department in determining whether or not a licensee is in compliance with certain provision of the Act such as Financial Code Section 50201 that requires a licensee to maintain a minimum tangible net worth of $250,000.

5. PMCC's fiscal year ends on December 31. On November 30, 1999 the Department sent a routine letter to PMCC reminding the company of its obligation to submit its audit report for fiscal year 1999 by April 15, 2000. PMCC did not file the 1999 audit report by the April 15, 2000 due date.

6. PMCC submitted, on May 15, 2000, audited "Consolidated Financial Statements" for "PMCC Financial Corp and Subsidiary," dated April 26, 2000. The financial statements submitted did not, however, provide a breakdown specifically showing the financial condition of PMCC, as opposed to the parent, for the year 1999.

7. On November 17, 2000 the Department wrote to PMCC acknowledging receipt of the annual audit for fiscal 1999 and asked for additional information required by Section 1950.200 of Title 10 of the California Code of Regulations. On November 27, 2000 the Department again wrote PMCC and pointed out that, in fact, the materials received reflected the

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[1] California Financial Code section 50002.
[2] California Financial Code section 50200.
[3] California Financial Code section 50307. The purpose of this requirement is to facilitate the Department's calculations made pursuant to section 50401, whereby the commissioner is responsible for collecting each licensee's pro-rata share of costs incurred in the administration of the Act.

financial condition of the parent of PMCC, not the licensee itself. Senior Examiner Yolanda Cherry asked PMCC to provide audited financials for PMCC for 1999 within 30 days.

8. On December 4, 2000 the Department wrote PMCC and reminded the company to submit its audit report for fiscal 2000 by April 15, 2001. When that deadline was missed, the Department wrote again, on May 9, 2001, asking for compliance within 10 days.

9. As of March 30, 2001 the Department had not received the required financials for fiscal 1999, nor had it received the report of Report of Loans and Loans Serviced for fiscal 2000. On that date Special Administrator DiAun Burns wrote to PMCC and asked that the 1999 audit information accompany the fiscal 2000 audited financials that were due on April 15, 2001. When the requested materials for 1999 were still not forthcoming, Ms. Burns again wrote to PMCC on May 10, 2001. She asked for immediate compliance and advised PMCC of the imposition of a $1,000 penalty for failure to provide the 1999 audit report, the payment of which was due on or before May 21, 2001. She also advised PMCC that failure to comply "will result in an action to suspend or revoke." To date, PMCC has provided no additional data concerning PMCC's 1999 financials. However, the penalty was paid.

10. The instant Accusation, alleging non-receipt of the 1999 and 2000 audit reports and the 2000 Report of Loans and Loans Serviced was prepared and served on PMCC by certified mail on or about July 16, 2001. On or about August 14, 2001 PMCC submitted a Report of Loans and Loans Serviced for 2000, indicating that PMCC did not do any business in California in the year 2000.

11. On February 20, 2002, the day before the instant hearing, PMCC faxed to the Department an audit report, dated April 9, 2001, for fiscal 2000. This most recent consolidated financial statement contains separate data for PMCC (as distinct from the parent corporation). The 1999 audit report for the specific financial condition of PMCC has still not been provided.

12. On August 20, 2001, PMCC submitted PMCC Financial Corp. Consolidated Financial Statements dated December 31, 1999 and 1998, and submitted PMCC Financial Corp. Consolidated Financial Statements dated December 31, 2000 and 1999. On the same date,

PMCC also paid its $2,000 in fines in full. The Department found and advised PMCC that the consolidated audit reports submitted August 20, 2001 reflected the financial condition of the parent and not PMCC. As a result, PMCC was not in compliance with the Act with respect to the 1999 and 2000 audit reports.

13. In late October 2001, counsel for PMCC was involved in an automobile accident that he states caused him to be seriously injured and incapacitated through January 3, 2002. During this time and the February 21, 2002 hearing, PMCC represents that it made several attempts, although PMCC does not specify any of the attempts, to comply with the reporting requirements.

14. This is not the first Accusation brought by the Department against PMCC for its failure to abide by the reporting requirements of the Act. On January 5, 2000 the Department sent a routine letter to PMCC reminding the company of its obligation to submit a Report of Loans and Loans Serviced no later than March 1, 2000 for fiscal 1999. Meanwhile, PMCC failed to timely file the Report of Loans and Loans Serviced for 1999, and on or about March 15, 2000 the Department assessed a fine of $1,000.[4] On or about April 12, 2000 the Department filed an Accusation alleging the continuing failure to file the report. When PMCC later paid the fine and filed the report, the Accusation was dismissed.

III

LEGAL CONCLUSIONS

Pursuant to the foregoing findings of fact, the California Corporations Commissioner makes the following legal conclusions:

1. The failure to make any report required by law or by the commissioner within 10 days from the date designated for the making of the report shall constitute grounds for the suspension or revocation of the license held by the residential mortgage lender. (Financial Code section 50326.) The California Corporations Commissioner may, after notice and an opportunity to be heard, revoke or suspend any license if the California Corporations Commissioner finds

[4] By authority of Financial Code section 50326 the Department may penalize a licensee $100 per day, up to 10 days, for failure to "make any report required by law or by the commissioner within 10 days from the day designated for the making of the report."

that a licensee has violated any provision of the California Residential Mortgage Lending Law. (Financial Code Section 50327). PMCC argues compliance with the statutory scheme embodied in the Financial Code, though not "perfect compliance." On the lack of perfection, all present agreed. To the existence of substantial compliance, as that phrase has traditionally been observed, there is little support in the record. In deciding whether there has been compliance with the requirements of a statutory duty, the substantial compliance test is often employed to determine whether a party has met the requirements of the statute where strict compliance is not necessary to effectuate the purposes of the act. (See Johnson v. San Diego Unified School District, 217 Cal. App. 3d 692 (1990).)

Here, the 1999 audit report with sufficient detail to distinguish PMCC's performance from its parent has never been filed. The Department needs this detail in order to ensure that PMCC is in compliance with the Act, including the minimum net worth requirement of Financial Code Section 50201. The 2000 audit report was faxed (original not filed) the day before the hearing in this matter, 10 months late. The 1999 Report of Loans and Loans Serviced was filed only after an Accusation was served on PMCC and a fine levied. The 2000 Report of Loans and Loans Serviced was filed five and one-half months late. No matter how one defines the purpose of the Financial Code's filing requirements, PMCC has not demonstrated substantial compliance.

2. Two of the three reports that are the subject of the Accusation have now been furnished to the Department. This degree of compliance was achieved only after the imposition of two fines and the filing of an Accusation. However, the 2000 audit report was received nearly a year late and less than 24 hours before the start of the instant hearing, the 2000 Report of Loans and Loans Services was filed 5 ½ months late, and the fine imposed on May 10, 2001 was also paid late. This licensee has repeatedly failed to provide timely and complete reports of its financial condition and business operations in violation of the Act. As no corporate representative of the licensee was present at the hearing, no explanation was offered for the apparent disinterest in timely adherence to California laws and regulations. The additional evidence submitted with PMCC's written argument following the California Corporations

Commissioner's rejection of the Administrative Law Judge's Proposed Decision also does not provide a sufficient explanation as to PMCC's failure to comply with its reporting obligations.

3. Therefore, with regard to all three reports alleged (the 1999 audit report, the 2000 audit report and the 2000 Report of Principal Amount of Loans Serviced) cause exists to revoke PMCC's license, based on Factual Findings 2 through 14.

ORDER

Wherefore, based on the record in this case, including the transcript of proceedings of February 21, 2002, PMCC and the Departments' written arguments, and PMCC's supporting declarations, the foregoing and good cause appearing therefore,

Under the provisions of Financial Code Sections 50200, 50307, 50326, 50327, and 50401, PMCC Mortgage Corp's residential mortgage lender license number 413 0227 is hereby revoked.

This Decision shall become effective on August 27, 2002.

IT IS SO ORDERED.

DATED: August 27, 2002

DEMETRIOS A. BOUTRIS
California Corporations Commissioner