BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of THE COMMISSIONER OF BUSINESS OVERSIGHT Complainant. vs. DEANDRE DEWAYNE HUGHES, Respondent.	NMLS No. 516007 Sponsor File No. 603-8780 OAH No. 2014110503

DECISION

The attached Proposed Decision after Remand of the Administrative Law Judge of the Office of Administrative Hearings, dated October 22, 2015, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter with technical and minor changes on the attached Errata Sheet pursuant to Government Code section 11517(c)(2)(C).

This Decision shall become effective on December 18, 2015.

IT IS SO ORDERED this 18th day of November, 2015.

/s/
JAN LYNN OWEN
Commissioner of Business Oversight

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT,
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
OF THE STATE OF CALIFORNIA

In the Matter of the Statement of Issues of THE COMMISSIONER OF BUSINESS OVERSIGHT, Complainant, vs. DEANDRE DEWAYNE HUGHES, Respondent.	NMLS No. 516007 Sponsor File No. 603-8780 OAH No. 2014110503

PROPOSED DECISION AFTER REMAND

Thomas Y. Lucero, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on March 26, 2015, in Los Angeles, California.

Mary Ann Smith, complainant, was represented at the hearing by counsel, Judy L. Hartley.

DeAndre DeWayne Hughes, respondent, represented himself.

On March 26, 2015, the parties submitted the matter and the record closed for preparation of a proposed decision.

On April 21, 2015, the proposed decision was issued.

On July 23, 2015, under Government Code section 11517, subdivision (c)(2)(D), the Department of Business Oversight filed with the Office of Administrative Hearings an "Order of Rejection of Proposed Decision and Referral to Administrative Law Judge for Remand." The order stated that the issue to be considered on remand was, "Whether Respondent's application to be licensed as a mortgage loan originator should be denied under the California Finance Lenders Law [Fin. Code, §§ 22000 et seq.] . . . ." In addition, the order sought to correct two typographical errors: in the heading of the Proposed Decision, "CONSUMER SERVICES & HOUSING AGENCY" should be "BUSINESS, CONSUMER

SERVICES AND HOUSING AGENCY," and on page 2, in Factual Finding 5, line 1, "March 22, 2002" should be "March 25, 2002."

On September 25, 2015, the ALJ heard this matter on remand.

Mary Ann Smith, complainant, was represented at the September 25, 2015 hearing by counsel, Judy L. Hartley.

DeAndre DeWayne Hughes, respondent, did not appear at the September 25, 2015 hearing.

No additional evidence was presented. The ALJ now issues this Proposed Decision after Remand.

FACTUAL FINDINGS

1. Complainant brought the Statement of Issues in her official capacity as the Deputy Commissioner of the Department of Business Oversight, a department of the Business, Consumer Services and Housing Agency (the Department). Respondent filed a timely Request for Hearing.

2. On March 22, 2013, respondent applied for a license as a mortgage loan originator under CFLL, the California Finance Lenders Law (Fin. Code §§ 22000 et seq., in particular, Fin. Code § 22105.1), filing form MU4 through the NMLS, the Nationwide Mortgage Licensing System, and updating the application on the NMLS on June 10, 2013. The Department did not issue respondent a license.

3. In his application, respondent disclosed his felony conviction, attached a copy of the court's minute order and, in a text box under the heading, "Event Explanation Detail (Required)," wrote:

> 03/2002 – Grand theft auto – driving vehicle more than law limit of 15 feet. Was convicted of auto theft after moving vehicle that was not owned by me more than the legal limit of 15 feet. I drove the vehicle in question from one side of the block to the other, to allow room for my cousin to move his vehicle from a parked position. I NEVER ACTUALLY STOLE ANY VEHICLE. District Attorney pressed charges. 3 years probation, community service, $500 fine. Was released from jail after serving 26 days in custody, and while working, attempted to complete 142 days of community service unsuccessfully. Probation violation of incomplete community service led to arrest in May 2004 followed by 2 months actual prison sentence in Delano California. (16-month sentence/half time = 270 days, with 223 days credited from probation time served). I have always been, and will continue to be a law abiding citizen.

In the application's attestation, respondent affirmed he had executed the application on his own behalf and that its contents are "current, true, accurate and complete and are made under penalty of perjury . . . ." (Exhibit 3.)

4. Respondent's amended application dated June 10, 2013, was substantially the same as the initial application, but added that he had become employed by Cash Call, Inc. (Exhibit 4.)

5. On March 25, 2002, respondent was convicted of a violation of Penal Code section 487, subdivision (d)(1) (grand theft-auto), in the Superior Court of California, County of Los Angeles, case no. NA051889, a felony. Respondent was placed on formal probation for three years and ordered to serve 180 days in County jail, the last 142 days, however, to be served in PAAWS, that is, the Probation Adult Alternative Work Service Program.

6. The facts and circumstances of the conviction are that, in March 2002, respondent was visiting a cousin at an apartment house in Long Beach. They saw a man drive up, berate a woman for "cheating on him," after which the two drove off, leaving the woman's vehicle running, blocking cars, though not that of respondent's cousin. Respondent testified that in order to be a good Samaritan, he decided to park the woman's vehicle across the street and, leaving the driver's door open and his left foot trailing, as soon as he had moved the vehicle just over 15 feet, he was arrested by Long Beach police, who were quickly joined by the man and woman whom respondent and his cousin had seen arguing, and who were also police officers engaged in a sting operation.

7. Respondent did not obey the March 22, 2002 order regarding PAAWS, as reported to the court on January 27, 2003. On February 18, 2003, the court revoked respondent's probation and issued a bench warrant for his arrest.

8. Respondent testified that for a time he had participated in PAAWS as ordered, but stopped, without notice or petition to the court, because his work as a carpenter did not leave him enough time. Respondent acknowledged he acted wrongly in disobeying the court. When stopped by police for a traffic violation in 2004, he was aware he would be arrested for violating probation. Respondent consulted private counsel, but realized he had no good explanation for his failure to comply with probation and decided to save the money he would otherwise pay a lawyer and went back to court represented by a public defender.

9. On June 23, 2004, the court sentenced respondent to "the low term of 016 months" in state prison. (Exhibit 2, page 000023.)

10. Respondent testified that he considered seeking expungement under Penal Code section 1203.4, but believed, based on information from Superior Court personnel to whom he made inquiry, that he was ineligible for relief because of his state prison sentence. Respondent further testified that he will seek a pardon from the office of the Governor of California.

11. Respondent is currently unemployed, but has worked for a lender in the past in a position that did not at the time but, owing to changes in the law, now would require his being licensed by the Department.

12. Cash Call, Inc., a lender licensed by the Department under the CFLL, is respondent's sponsor for a license and will employ him upon his obtaining a license.

LEGAL CONCLUSIONS

1. Cause exists to deny respondent, DeAndre DeWayne Hughes, a license as a mortgage loan originator, based on his conviction of grand theft-auto, as set forth in Factual Findings 3, 4, 5, 6, and 9.

2. Respondent did not meet his burden of proof to show by a preponderance of the evidence that a license may be appropriately issued to him.

3. Financial Code section 22013.5, subdivision (a), states that a " '[m]ortgage loan originator' " means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan."

4. Financial Code section 22109.1, subdivision (a), states:

> The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings:
>
> [¶] . . . [¶]
>
> (2) (A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.
>
> (B) For purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).

5. Penal Code section 486 provides that "[t]heft is divided into two degrees, the first of which is termed grand theft; the second, petty theft." Penal Code section 487,

subdivision (d)(1), provides that "[g]rand theft is theft committed . . . [¶] [w]hen the property taken is . . . [¶] an automobile."

6. The crime of grand theft-auto is a species of larceny involving "feloniously" taking property. As set out in pertinent part in Penal Code section 484, subdivision (a): "Every person who shall feloniously steal, take . . . or drive away the personal property of another, . . . is guilty of theft. . . ." Under the same section, theft may occur not only by "feloniously taking," but also by falsehood or fraud: "Every person . . . who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who . . . imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft."

7. Various types of theft are now classified in the Penal Code as larceny (Penal Code, Part 1, Title 13, Chapter 5, sections 484 through 502.9), but in the past there were several crimes of theft, such as embezzlement, that were classified differently from larceny. As the California Supreme Court has recently explained, "[l]arceny requires a 'trespassory taking,' which is a taking without the property owner's consent." (*People v. Williams* (2013) 57 Cal.4th 776, 788, citing *Edwards* (1925) 72 Cal.App. 102, 113.) Embezzlement and other crimes of taking by fraud or false pretenses were not considered larceny, notwithstanding Penal Code section 484, subdivision (a), *supra*. "By contrast [to larceny], theft by false pretenses involves the *consensual* transfer of possession as well as *title* of property; therefore, it cannot be committed by trespass." (*Ibid.*, 57 Cal.4th at 788 (emphasis in original).) "The fraud takes the place of the trespass and the defendant is guilty of larceny by trick or device." (*Ibid.*, 57 Cal.4th at 783, citing 2 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Crimes Against Property, § 15, p. 39 (internal brackets omitted).)

8. A theft by false pretenses or by other falsehood is clearly a crime involving dishonesty. Whether other larcenies, and more specifically grand theft-auto, are also crimes involving dishonesty, is a more difficult question. Citing old precedents, the Supreme Court acknowledged "the seemingly arbitrary distinctions" between the various theft crimes. (*Id.*, 57 Cal.4th at 784.) The court quotes at length from Perkins & Boyce, Criminal Law (3d ed. 1982) Offenses Against Property, p. 291:

> The wrongful appropriation of another's money or chattels, with the willful intent to deprive the other thereof permanently, should constitute just one offense. . . ."]; . . . *Van Vechten v. American Eagle Fire Ins. Co.* (1925) 239 N.Y. 303, 306, 146 N.E. 432 [Justice Benjamin Cardozo, then at the New York Court of Appeals, writing that the central distinction between larceny and embezzlement failed to "correspond to any essential difference in the character of the acts"]; *Com. v. Ryan* (1892) 155 Mass. 523, 527, 30 N.E. 364 [Justice Oliver Wendell Holmes, Jr., then at the Mass. Supreme Judicial Court, describing the separation of embezzlement and larceny as a "historical accident"].) (*Id.*, 57 Cal.4th at 784-85.)

9. In the end, the Supreme Court in *People v. Williams*, *supra*, chose to preserve at least some of the historical distinction between larceny of various kinds on the one hand, and crimes of taking by false pretenses or other falsehood on the other. But it did so for procedural reasons, or reasons unrelated to whether larceny, in substance, involves dishonesty.

10. The distinction still extant in California law between larcenies involving "feloniously taking," such as grand theft-auto, and other thefts by false pretenses and the like, does not mean that the former do not involve acts of dishonesty, as the latter clearly do. Grand theft-auto, at least for purposes of licensure as a mortgage loan originator, is a crime that involves an act of dishonesty because it involves a fundamentally deceitful act of entering an automobile with the intent to steal it, analogous to burglary and other types of grand theft. As set out in *People v. Collins* (1986) 42 Cal.3d 378, 395:

> An intent to commit larceny evidences a willingness to act dishonestly, and ipso facto reflects on the witness's credibility. (*[People v.] Castro,* [(1985)] 38 Cal.3d [301] at pp. 313–315 . . . .) Although an intent to commit "any felony" includes both felonies that necessarily involve moral turpitude and felonies that do not, the distinction is immaterial for present purposes: whether or not the target felony itself evidences a moral defect, burglary remains in all cases the fundamentally deceitful act of entering a house or other listed structure with the secret intent to steal or commit another serious crime inside . . . .

11. As a matter of procedure, dishonesty may not be an element of grand theft-auto, but dishonesty is part of the substance of the act committed, as in most if not all types of theft, so much so that courts often allow evidence of past grand theft convictions for impeachment of the perpetrator. *People v. Chavez* (2000) 84 Cal.App.4th 25, 28-29:

> The California Supreme Court has divided crimes of moral turpitude into two groups. (*People v. Castro* (1985) 38 Cal.3d 301, 211 Cal.Rptr. 719, 696 P.2d 111.) The first group includes crimes in which dishonesty is an element (i.e., fraud, perjury, etc.). The second group includes crimes that indicate a "'general readiness to do evil,'" from which a readiness to lie can be inferred. (*Id.* at p. 315, 211 Cal.Rptr. 719, 696 P.2d 111.) Crimes in the latter group are acts of "baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Craig* (1938) 12 Cal.2d 93, 97, 82 P.2d 442.) "Although the inference is not as compelling in the latter case, 'it is undeniable that a witness's moral depravity of any kind has some 'tendency in reason' [citation] to shake one's confidence in his honesty." (*People v. Thornton* (1992) 3 Cal.App.4th 419, 422, 4 Cal.Rptr.2d 519.)

Grand theft-auto is a felony that, in these circumstances and in light of current case law, must be deemed an act of dishonesty.

12. Despite respondent's testimony regarding expungement's unavailability, such relief could be granted him under Penal Code section 1203.4 if a court "'in its discretion and

the interests of justice, determines he should be granted relief.'" *(People v. McLernon* (2009) 174 Cal.App.4th 569, 572, quoting *People v. Butler* (1980) 105 Cal.App.3d 585, 587.)

13. As respondent was found guilty of a felony preceding his application, and that felony involved an act of dishonesty, Financial Code section 22109.1 mandates denial of his application absent respondent's meeting the criteria of one of the two exceptions in subdivision (a)(2) of the statute. Respondent has not met the criteria of either exception.

ORDER

Respondent DeAndre DeWayne Hughes' application to be licensed as a mortgage loan originator is denied.

Dated: October 22, 2015

/s/

THOMAS Y. LUCERO
Administrative Law Judge
Office of Administrative Hearings