

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of THE
COMMISSIONER OF CORPORATIONS OF
THE STATE OF CALIFORNIA,

Complainant,

v.

TY EARL LAFFOON a.k.a
EARL HOWARD LAFFOON, JR.,

Respondent.

Case No.: NMLS ID 441665

OAH No.: 2013061033

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated September 9, 2013, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on January 5, 2014.

IT IS SO ORDERED this 6th day of December, 2013.

COMMISSONER OF BUSINESS OVERSIGHT

/s/
Jan Lynn Owen

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PROPOSED DECISION

This matter came on regularly for hearing on August 28, 2013, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Jan Lynn Owen (Complainant)¹ was represented by Sophia C. Kim, Corporations Counsel.

Ty Earl Laffoon a.k.a. Earl Howard Laffoon, Jr. (Respondent) was present and was represented by Michael E. Thompson, Attorney at Law.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

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¹ The Statement of Issues was filed on or around June 5, 2013, by Jan Lynn Owen in her capacity as Commissioner of Corporations. On July 1, 2013, pursuant to Governor Brown's Reorganization Plan No. 2, the Department of Corporations and the Department of Financial Institutions became the Department of Business Oversight. Jan Lynn Owen was appointed Commissioner of Business Oversight.

FACTUAL FINDINGS

1. On May 4, 2012, Respondent filed an application for a mortgage loan originator license pursuant to the California Residential Mortgage Lending Act (Fin. Code, §§ 50000 et seq.) He submitted the application by filing Form MU4 through the Nationwide Mortgage Licensing System, and he updated the form via the same system on July 20, 2012. The Department of Corporations, now the Department of Business Oversight (Department) declined to issue the license.

2. On his application, Respondent disclosed that he had been convicted of a felony.

3. On May 13, 2004, in the United States District Court, Southern District of California, in Case No. 04-CR-1117-JM, Respondent pled guilty and was convicted of conspiring to knowingly and willfully, with the intent to defraud, smuggle merchandise, specifically pharmaceuticals, into the United States, in violation of 18 U.S.C. § 545; and to introduce into interstate commerce a misbranded drug with intent to defraud and mislead, in violation of 21 U.S.C. §§331(a), 333(a)(2) and 353(b), felonies.

4. Respondent was placed on supervised probation for a period of three years under various terms and conditions including not entering the Republic of Mexico without written permission of the Court or his probation officer, providing complete disclosure of personal and business financial records to his probation officer on request; performing 200 hours of community service, and paying fines and assessments totaling \$1,100. Respondent successfully completed the terms and conditions of probation and, on June 21, 2006, the Court granted him an early termination of probation.

5. Respondent's guilty plea and subsequent conviction came about as the result of a plea agreement which he signed on April 22, 2004, He signed the agreement under the following statement: "In addition to the foregoing provisions to which I agree, I swear under penalty of perjury that the facts in the 'Factual Basis' paragraph above are true." The facts to which Respondent swore were true are as follows:

1. Beginning on or about March, 2003, and continuing up to and including March 22, 2004, the defendant [Respondent] worked for Mark Kolowich and Odette Pidermann in their internet pharmacy business, known as World Express Rx, located in San Diego County, California, smuggling pharmaceuticals into the United States. The defendant agreed with Mark Kolowich to split the profits from a related internet pharmacy known as Cobra Rx.

2. The Cobra Rx website allowed customers to order prescription drugs without having a prescription. The pharmaceuticals were shipped to customers throughout the United States using the U.S. mails.

3. The defendant agreed to and did travel to Mexico to bring bulk pharmaceuticals for World Express Rx and Cobra Rx into the United States. The defendant did not declare the pharmaceuticals to the Customs or FDA inspectors at the border when entering the United States.

4. The pharmaceuticals included tablets and capsules containing the active ingredients for Viagra, Propecia, Celebrex and Xenical, which were marketed by World Express Rx and Cobra Rx as "generic" versions of those drugs. The defendant knew that while the World Express Rx website used the trade names "Viagra", "Cialis" and "Propecia", the pharmaceuticals sold under those names were not manufactured by the U.S. drug manufacturers that owned those trade names. The defendant knew that the pharmaceuticals could not be lawfully imported or sold in the United States.

5. The parties agree that the total market value of the pharmaceuticals smuggled into the United States by the defendant and sold by World Express Rx is approximately \$3 million. The parties agree that the total dollar value of the pharmaceuticals sold by Cobra Rx is less than \$20,000. (Exhibit 13.)

6. Respondent chose not to testify at the administrative hearing. However, he corroborated the accuracy of the facts recited in the plea agreement, including but not limited to his failure to declare the pharmaceuticals to Customs or FDA officials at the border, in an undated letter to the Department. (Exhibit 8.)

7. Respondent does not dispute the conviction or the facts that led to it.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application pursuant to Financial Code² section 50141 for conviction of a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering, as set forth in Findings 2, 3, 4, 5, 6, and 7.

2. Code section 50003.5, subdivision (a) states:

"Mortgage 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.

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² All statutory references are to the Financial Code unless otherwise specified.

3. Code section 50141, subdivision (a) states in pertinent part:

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).

(Emphasis added.)

4. As referenced above, Respondent does not dispute the conviction or its underlying facts and circumstances. He argues only that his crime did not involve an act of fraud or dishonesty such that Code section 50141 would preclude him from licensure. Complainant argues that both fraud and dishonesty were involved in Respondent's crime, and that denial of the application is mandatory.

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5. The parties disagree over whether the fact that Respondent's crime was one involving moral turpitude necessarily means that he was dishonest. That fact does not resolve the issue. In *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027, the court stated:

Our Supreme Court has defined moral turpitude as "an act 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].) Moral turpitude has also been described as any crime or misconduct committed without excuse, or any "dishonest or immoral" act not necessarily a crime. (*In re Higbie* (1972) 6 Cal.3d 562, 569 [99 Cal.Rptr. 865, 493 P.2d 97].) The definition depends on the state of public morals and may vary according to the community or the times, as well as on the degree of public harm produced by the act in question. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 181 [159 Cal.Rptr. 864].) Its purpose as a legislated standard is not punishment but protection of the public. (*Rice v. Alcoholic Beverage etc. Appeals Bd.* (1979) 89 Cal.App.3d 30, 36 [152 Cal.Rptr. 285].)

6. If the actual commission of a crime involves moral turpitude, then a conspiracy to commit that crime also involves moral turpitude. (*In re McAllister* (1939) 14 Cal.2d 602.) However, many crimes involving moral turpitude do not involve fraud or dishonesty. For example, arson (*People v. Miles* (1985) 172 Cal.App.3d 474); assault with a deadly weapon (*People v. Armendariz* (1985) 174 Cal.App.3d 674); first degree murder (*In re Kirschke* (1976) 16 Cal.3d 902); forcible rape (*People v. Rodriguez* (1992) 5 Cal.App.4th 1398); threatening to kill or seriously injure another person (*People v. Thornton* (1992) 3 Cal.App.4th 419) have all been found to be crimes involving moral turpitude, but all can be committed without the commission of a dishonest or fraudulent act. Thus, the question is not whether Respondent's crime involved moral turpitude, but whether it involved fraud or dishonesty.

7. Just as an act of moral turpitude need not involve a dishonest or fraudulent act, an act of dishonesty need not be spoken or written. Hiding cards in a poker game and using another person's credit card without his/her consent, and cheating on a test all involve dishonesty and/or fraud and are accomplished without the utterance of a word.³

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³ In his hearing brief, Respondent cited to two out-of-jurisdiction cases for the proposition that his case did not involve dishonesty. However, he did not establish that those cases involved an affirmative duty to disclose or declare the contraband being smuggled. It was that affirmative duty that Respondent dishonestly violated.

8. By Respondent's own admission, Respondent's crime involved dishonesty. Respondent admitted, both in his plea agreement and in his letter to the Department, that he smuggled illegal pharmaceuticals into the United States from Mexico, that he did not declare them to Customs or FDA officials when crossing the international border, and that he committed the acts willfully, knowingly, and with the intent to defraud. Respondent's crossing that border knowing he was carrying illegal pharmaceuticals and deliberately not declaring them was a fraudulent and dishonest act.

9. Code section 50141 mandates denial of the application under these circumstances unless Respondent satisfies the criteria for one of the two exceptions in subdivision (2)(B) of the statute. Those criteria have not been satisfied.

ORDER

The application of Respondent, Ty Earl Laffoon a.k.a. Earl Howard Laffoon, Jr., for a mortgage loan originator license is denied.

Dated: 9/9/13

/s/
H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings