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9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of THE COMMISSIONER OF) Case No.: 413-0570
BUSINESS OVERSIGHT,)
13)
14 Complainant,) ACCUSATION IN SUPPORT OF NOTICE OF
INTENT TO ISSUE ORDER SUSPENDING
15 vs.) RESIDENTIAL MORTGAGE LENDING
LICENSE AND IMPOSING PENALTIES
16)
INTERNATIONAL CITY MORTGAGE, INC.,)
17)
Respondent.)
18)
19)
20)

21 The Complainant is informed and believes, and based upon such information and belief,
22 alleges and charges as follows:

23 **I.**

24 Respondent International City Mortgage, Inc. (“ICM”) is a residential mortgage lender
25 licensed by the California Commissioner of Business Oversight (“Commissioner”) of the
26 Department of Business Oversight (“Department”) pursuant to the California Residential Mortgage
27 Lending Act (Fin. Code § 50000 et seq.) (“CRMLA”). ICM has its principal place of business
28 located at 333 S. Anita Drive, Suite 390, Orange, California 92868.

1 **II.**

2 On or about May 5, 2014, the Commissioner commenced a regulatory examination of the
3 books and records of ICM at its corporate office in Orange, California. The regulatory examination
4 disclosed that ICM collected mortgage insurance premiums (“MIP”s), and impound taxes and
5 insurance (“Impound”), at the close of loan files. ICM did not timely transfer these funds from the
6 general account to the MIP and Impound trust accounts. This is in violation of Financial Code
7 section 50202, subdivision (a)(3). Consequently, the escrow accounts had debit balances, in
8 violation of California Code of Regulations, title 10, section 1950.314.6.

9 ICM had trust shortages every month, from January to May, 2014. This is in violation of
10 California Code of Regulations, title 10, section 1950.314.1. At the start of the regulatory
11 examination on May 5, 2014, ICM had trust shortages of twenty-three thousand four hundred forty-
12 three dollars and seventeen cents (\$23,443.17) in the MIP trust account, and one thousand seven
13 hundred thirteen dollars and twenty-one cents (\$1,713.21) in the Impound trust account. Don
14 Masula, Chief Financial Officer for ICM, told the Department’s Examiner that the shortages were
15 caused by the company’s lack of liquidity. Despite this lack of liquidity, the Department’s
16 Examiner found that as of March 31, 2014, the company had loaned three hundred seventy-nine
17 thousand five hundred dollars (\$379,500.00) to its President, Kirk Hankla. This loan was
18 outstanding as of the date of the examination, and the payment terms were undetermined.

19 Additionally, in the Notes to Financial Statements December 31, 2013, the CPA for ICM
20 stated that ICM had received cash deposits from customers for appraisal and credit report fees
21 totaling forty-five thousand seven hundred sixty-three dollars (\$45,763.00). The Commissioner’s
22 Examiner requested the detailed monthly escrow liability ledger, bank reconciliation, and related
23 bank statements for these deposits. The company provided a letter from the CPA, dated June 6,
24 2014, which indicated that no funds from these deposits were maintained. On June 18, 2014, the
25 Examiner demanded the detailed monthly escrow liability ledger, bank reconciliation, and related
26 bank statements for these deposits. As of the date of the Examiner’s Report, on August 18, 2014,
27 these have not been provided by ICM. This is in violation of Financial Code section 50314,
28 subdivisions (a) and (b).

1 The regulatory examination also disclosed that ICM charged borrowers per diem interest
2 several days prior to the disbursement of loan proceeds, in excess of the one-day allowed grace
3 period. This is in violation of Financial Code section 50204, subdivisions (k) and (o), and Civil
4 Code section 2948.5. The per diem interest overcharges averaged ninety-five dollars (\$95.00) per
5 loan. The range of per diem interest overcharges was between forty-seven dollars (\$47.00) and one
6 hundred seventy-five dollars (\$175.00) per loan. The range of days the interest was overcharged
7 was between one (1) and eleven (11) days.

8 This is a repeat violation. In 2007, ICM was required to perform a self-audit and to refund
9 eight thousand three hundred ninety-five dollars and ninety-three cents (\$8,395.93) on three
10 hundred two (302) loans for per diem interest overcharges. ICM was again required to refund per
11 diem interest overcharges as a result of a 2011 examination.

12 ICM continues to overcharge its borrowers for per diem interest or understates the per diem
13 interest credit due borrowers, in violation of Financial Code section 50204, subdivisions (o) and (k)
14 and Civil Code section 2948.5.

15 III.

16 Based on the above described conduct, the Commissioner may suspend ICM's CRMLA
17 License under any one (1) of three (3) different statutory grounds.

18 Financial Code section 50327 provides in pertinent part:

19 (a) The commissioner may, after notice and a reasonable
20 opportunity to be heard, suspend or revoke any license, if the
21 commissioner finds that: (1) the licensee has violated any
22 provision of this division [commencing with Fin. Code § 50000] or
23 rule or order of the commissioner thereunder; or (2) any fact or
24 condition exists that, if it had existed at the time of the original
25 application for license, reasonably would have warranted the
26 commissioner in refusing to issue the license originally.

27 First, pursuant to Financial Code section 50327, subdivision (a)(1), the Commissioner may
28 suspend or revoke a license if a licensee has violated "any provision of this division or any rule or
order of the commissioner thereunder." ICM's repeat conduct, discussed above, is a violation of
Financial Code section 50204, subdivisions (k) and (o), which states:

A licensee may not do any of the following:

...

1 (k) Do an act . . . that constitutes fraud or dishonest dealings.

2 . . .
3 (o) Commit an act in violation of Section 2948.5 of the Civil Code

4 Civil Code section 2948.5, subdivision (a)(1), prohibits a lender from requiring a borrower
5 to pay more than one (1) day of interest on a loan, prior to the day of disbursement to the borrower
6 or on the borrower’s behalf.

7 Second, ICM’s repeat conduct with regard to the trust fund shortages, in violation of
8 California Code of Regulations, title 10, section 1950.314.6, is a violation of a rule of the
9 Commissioner under the CRMLA, giving the commissioner the power to suspend ICM’s license.
10 California Code of Regulations, title 10, section 1950.314.6 provides:

11 A residential mortgage lender, residential mortgage lender and
12 servicer, or residential mortgage loan servicer shall not withdraw,
13 pay out, or transfer moneys from any loan or servicing account in
14 excess of the amount to the credit of the account at the time of the
15 withdrawal, payment, or transfer.

16 However, a residential mortgage lender, residential mortgage
17 lender and servicer, or residential mortgage loan servicer may
18 advance its own funds to a loan or servicing account under an
19 impound agreement to pay taxes, insurance, and other payments, if
20 the required withdrawal, payment, or transfer exceeds the amount
21 of the credit for the account.

22 Third, ICM’s repeat conduct with respect to the untimely transfers of MIP and Impound
23 funds, and therefore the commingling of client funds with licensee funds, is a violation of Financial
24 Code section 50202, subdivision (a)(3), which states:

25 “Escrow funds for a purpose authorized by the residential mortgage loan contract... (3) may
26 not be commingled with a licensee’s funds.”

27 Fourth, this commingling of funds was also a violation of California Code of Regulations,
28 title 10, section 1950.314.1, which states that a residential mortgage lender, residential mortgage
lender and servicer, or residential mortgage loan servicer shall hold customer funds “in accordance
with the terms of a written agreement between the licensee and such borrower, lender or seller....”

Fifth, ICM violated Financial Code section 50314, subdivisions (a) and (b) by failing to
provide the detailed monthly escrow liability ledger, bank reconciliation, and related bank

1 statements for the appraisal and credit report fees received from customers, which the
2 Commissioner’s Examiner requested several times. Financial Code section 50314, states, in
3 pertinent part:

4 (a) Every person subject to this division shall keep documents and records
5 that will properly enable the commissioner to determine whether the
6 residential mortgage lending or residential mortgage loan servicing functions
7 performed by that person comply with the provisions of this division and with
8 all rules and orders made by the commissioner under this division. Upon
9 request of the commissioner, residential mortgage lenders and residential
10 mortgage loan servicers shall file an authorization for disclosure to the
11 commissioner of financial records of the licensed business pursuant to Section
12 7473 of the Government Code.

13 (b) The business documents and records of every residential mortgage lender
14 or residential mortgage loan servicer, whether required to be licensed under
15 this division or not, are subject to inspection and examination by the
16 commissioner at any time without prior notice. The provisions of this
17 subdivision shall not apply to persons specified in subdivision (g) of Section
18 50003.

19 Any person subject to this division shall, upon request and within the time
20 specified in the request, allow inspection and copying of any documents and
21 records by the commissioner or his or her authorized representative.

22 Sixth and finally, the violations of the CRMLA described above, if committed by ICM on or
23 before having originally sought a license from the Department under the CRMLA, would have
24 constituted grounds for the Commissioner to deny ICM’s application under Financial Code section
25 50327, subdivision (a)(2). Thus, a fact or condition now exists that, if it had existed at the time of
26 the original application of ICM for a license under the CRMLA, reasonably would have warranted
27 the Commissioner in refusing to issue the license.

28 **IV.**

Fines and penalties should be imposed on ICM for the conduct discussed above.

Financial Code section 50513 provides in pertinent part:

(a) The commissioner may do one or more of the following:

...

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

- 1 . . .
- 2 (b) The commissioner may impose a civil penalty on a mortgage
- 3 loan originator or any residential mortgage lender or servicer
- 4 licensee employing a mortgage loan originator, if the commissioner
- 5 finds, on the record after notice and opportunity for hearing, that the
- 6 mortgage loan originator or any residential mortgage lender or
- 7 servicer licensee employing a mortgage loan originator has violated
- 8 or failed to comply with any requirement of this division
- 9 [commencing with Fin. Code § 50000] or any regulation prescribed
- 10 by the commissioner under this division or order issued under
- 11 authority of this division.
- 12 (c) The maximum amount of penalty for each act or omission
- 13 described in subdivision (b) shall be twenty-five thousand dollars
- 14 (\$25,000).
- 15 (d) Each violation or failure to comply with any directive or
- 16 order of the commissioner is a separate and distinct violation or
- 17 failure.

12 V.

13 The Commissioner finds that, by reason of the foregoing, ICM has violated Financial Code
14 sections 50202, subdivision (a)(3), 50204, subdivision (k) and (o), and 50314, as well as California
15 Code of Regulations, title 10, section 1950.314.1 and 1950.314.6.

16 For all the foregoing reasons, grounds exist to:

- 17 (1) suspend ICM’s CRMLA residential mortgage lender license pursuant to Financial Code
- 18 section 50327; and
- 19 (2) levy penalties against ICM pursuant to Financial Code section 50513.

20 **WHEREFORE, IT IS PRAYED** that:

- 21 1. The residential mortgage lender license of International City Mortgage, Inc. be suspended,
- 22 pursuant to Financial Code section 50327, for the *greater* period of:
- 23 a. Twelve (12) months, or
- 24 b. Until (i) ICM has submitted a complete self-audit report providing all the
- 25 information demanded by the Commissioner; (ii) the complete self-audit report has been determined
- 26 by the Commissioner to be trustworthy; (iii) ICM has complied fully with the Order to Refund
- 27 Excessive Per Diem Interest Charges Pursuant To Financial Code Section 50504; and (iv) ICM has
- 28 complied fully with the Order to Discontinue Violations Pursuant to Financial Code Section 50321;

1 2. Pursuant to Financial Code section 50513, subdivisions (b), (c) and (d), penalties be levied
2 against ICM for at least four (4) known violations of Financial Code section 50202, subdivision
3 (a)(3), whereby ICM comingled borrowers' funds with ICM's funds during the period from about
4 February 19, 2014, to at least May 5, 2014, in an amount of two thousand five hundred dollars
5 (\$2,500.00) per violation, for a total amount of ten thousand dollars (\$10,000.00), or according to
6 proof;

7 3. Pursuant to Financial Code section 50513, subdivisions (b), (c) and (d), penalties be levied
8 against ICM for at least seven (7) known violations of Financial Code section 50204, subdivisions
9 (k) and (o), whereby ICM overcharged borrowers per diem interest on loans funded during the
10 period from about November 27, 2013, to at least May 28, 2014, in an amount of two thousand five
11 hundred dollars (\$2,500.00) per violation, for a total amount of seventeen thousand five hundred
12 dollars (\$17,500.00), or according to proof;

13 4. Pursuant to Financial Code section 50513, subdivision (b), penalties be levied against ICM
14 for at least one (1) known violation of Financial Code section 50314, subdivisions (a) and (b),
15 whereby ICM did not maintain or provide to the Commissioner, records regarding the cash deposits
16 ICM received from customers for appraisal and credit report fees during the period from about
17 December 31, 2013, to at least August 18, 2014, in an amount of two thousand five hundred dollars
18 (\$2,500.00), or according to proof;

19 5. Pursuant to Financial Code section 50513, subdivisions (c) and (d), penalties be levied
20 against ICM for its repeated violation of California Code of Regulations, title 10, section
21 1950.314.1, whereby customer funds were not held and distributed according to the agreements
22 between ICM and those customers, in an amount of twenty-five thousand dollars (\$25,000.00), or
23 according to proof; and

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6. Pursuant to Financial Code section 50513, subdivisions (c) and (d), penalties be levied against ICM for its repeated violation of California Code of Regulations, title 10, section 1950.314.6, whereby shortages in the trust fund were discovered during the routine May 2014 examination, in an amount of twenty-five thousand dollars (\$25,000.00), or according to proof.

Dated: January 22, 2015
Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
JOANNE ROSS
Senior Corporations Counsel
Enforcement Division