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

12 In the Matter of:) OAH No. 2016050975
) NMLS No. 21001095
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) STIPULATION
14)
15 Complainant,)
 v.)
16)
17 KENNETH JAY SCHWARTZ,)
)
18 Respondent.)
19)
_____)

20
21 This Stipulation is entered into between Kenneth Jay Schwartz (Respondent) and the
22 Complainant the Commissioner of Business Oversight (Commissioner), and is made with respect to
23 the following facts:

24 RECITALS

25 A. On May 15, 2013, Kenneth Jay Schwartz (“Schwartz” or “Respondent”) filed an application
26 (“Form MU4 application” or “application”) with the Commissioner pursuant to the California
27 Residential Mortgage Lending Act (“CRMLA”) (Financial Code section 50000 et seq.), in particular,
28 Financial Code section 50140. The application was for licensure as a mortgage loan originator, with

1 employment on behalf of RH Lending. Schwartz submitted his application to the Commissioner by
2 filing his Form MU4 application through the National Mortgage Licensing System (NMLS). The
3 Form MU4 application, at Question K, under the heading of “Disclosure Questions,” asks the
4 following:

5 (K) has any state or federal regulatory agency or foreign financial regulatory authority of
self-regulatory organization (SRO) ever:

6 (1) found you to have made a false statement or omission or been dishonest, unfair or
unethical?

7 (9) entered an order concerning you in connection with any license or registration?

8 B. Schwartz answered “Yes” to both of these questions. He also submitted to the Commissioner
9 a California State Bar Attorney Record Search document. That document indicates Schwartz was
10 subject to two separate disciplinary actions in 1990 and 1998 by the California State Bar. Despite
11 these two actions, Schwartz’s State Bar license remained “Active.” Accordingly, the Commissioner
12 approved the mortgage loan originator license on Schwartz on January 24, 2014.

13 C. Financial Code section 50327 provides that the Commissioner may revoke any license if the
14 Commissioner finds that any fact or condition exists that, if it had existed at the time of the original
15 application for the license, reasonably would have warranted the Commissioner in refusing to issue
16 the license originally. Similarly, Financial Code section 50513 authorizes the Commissioner to
17 revoke a mortgage loan originator license if the licensee fails to meet the requirements of section
18 50141. Financial Code section 50141 also requires the Commissioner to deny an application for a
19 mortgage loan originator license if the Commissioner cannot find that the applicant “has
20 demonstrated such financial responsibility, character, and general fitness as to command the
21 confidence of the community and to warrant a determination that the mortgage loan originator will
22 operate honestly, fairly, and efficiently within the purposes of the division.”

23 D. The Form MU4 application requires the applicant to keep current information in the Form
24 MU4 application, and to file accurate supplementary information on a timely basis. On October 22,
25 2015, Schwartz filed an amended Form MU4 to indicate that his license to practice law had been
26 revoked by the State Bar. With his amendment, he attached a copy of a “Decision and Order of
27 Involuntary Inactive Enrollment,” recommending that Schwartz be disbarred from the practice of law
28 in the State of California. This decision was dated February 9, 2015.

1 E. On March 18, 2016, the Commissioner issued a Notice of Intention to Issue Order Revoking
2 Mortgage Loan Originator License, Accusation, and accompanying documents (“Accusation”). The
3 basis for the Commissioner’s Accusation was that if the foregoing totality of circumstances,
4 including the disbarment action against Schwartz, had been known at the time of the filing of his
5 mortgage loan originator application on May 15, 2013, the Complainant would have been mandated
6 to deny the license application under Financial Code section 50141. Accordingly, grounds exist
7 under Financial Code section 50327 and 50513 to revoke the license of Kenneth Jay Schwartz.

8 F. Respondent timely requested an administrative hearing in regards to the Accusation, which is
9 set before the Office of Administrative Hearings on October 4 and 5, 2016.

10 G. The Commissioner finds that entering into this Stipulation is in the public interest and
11 consistent with the purposes fairly intended by the policy and provisions of the CRMLA.

12 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
13 forth herein, the parties agree as follows:

14 **TERMS AND CONDITIONS**

15 1. Purpose. It is the intention of the parties to resolve this matter for the purpose of
16 judicial economy and expediency and without the uncertainty and expense of a hearing and/or other
17 litigation.

18 2. Waiver of Hearing Rights. Respondent agrees that this Stipulation shall have the
19 effect of withdrawing his request for an administrative hearing on the matter set forth herein.
20 Respondent acknowledges his right to an administrative hearing under the CRMLA in connection
21 with the Accusation set forth above, and hereby waives such right to hearing, and to any
22 reconsideration, appeal, or other rights which may be afforded pursuant to CRMLA, the California
23 Administrative Procedure Act (APA), the California Code of Civil Procedure (CCP), or any other
24 provision of law in connection with these matters.

25 3. Admissions. Respondent admits the allegations contained in the above-referenced
26 Accusation solely for the limited purposes of these proceedings and any future proceeding(s) that
27 may be initiated by or brought before the Commissioner against Respondent. It is the intent and
28 understanding between the parties that this Stipulation, and particularly the admissions of Respondent

1 herein, shall not be binding or admissible against Respondent in any action(s) brought against
2 Respondent by third parties.

3 4. Dismissal of Notice of Intention. Except as otherwise provided herein, the parties
4 agree that this Stipulation shall result in the dismissal of the Notice of Intention cited in Paragraph F.
5 The dismissal shall become effective upon the Effective Date of this Stipulation, as such date is
6 defined in Paragraph 21.

7 5. Continuing Education. Respondent agrees that for five (5) years immediately
8 following the Effective Date of this Stipulation, Respondent shall annually complete at least eight (8)
9 hours of continuing education offered by a vendor approved by the Nationwide Multistate Licensing
10 System (NMLS). Proof of annual compliance (Compliance Report, see paragraph 9, *infra*) shall be
11 submitted no later than September 1 of each specified year to the Commissioner's agent specified in
12 Paragraph 22.

13 6. Administrative Cost Payment. In consideration of the dismissal of the Notice of
14 Intention effected by Paragraph 4 above, Respondent agrees to pay an Administrative Cost Payment
15 to the Commissioner in the amount of five thousand dollars (\$5000.00). Respondent hereby agrees
16 to pay the Administrative Cost Payment within 30 days of the effective date of this Stipulation as
17 defined in Paragraph 21. Respondent shall remit the Administrative Cost Payment to the
18 Department via certified cashier's check made payable to The Department of Business Oversight and
19 sent to the Commissioner's Agent designated in paragraph 22. In the event the payment due date
20 falls on a weekend or holiday, the payment shall be due the next business day. Respondent
21 acknowledges that failure to timely pay the Administrative Penalty shall be a violation of this
22 Stipulation and constitute cause for the Commissioner to immediately issue an order pursuant to
23 Paragraph 11 below. Respondent further agrees that this Stipulation shall constitute a final decision
24 for the purpose of the Commissioner applying ex parte to the superior court, without further notice
25 to Respondent, for a civil judgment in the amount of the Administrative Penalty stipulated herein
26 and procuring a final order pursuant to the CRMLA, the California Finance Lenders Law ("CFLL"),
27 or any other provision of California law.

28 7. Employment Disclosure. Unless and until there is specific action by the Department

1 to revoke his MLO License, Respondent may continue to be employed by a lender licensed by the
2 Department. However, Respondent must disclose to any prospective or current employer in or
3 associated with the real estate, mortgage, financial lending, and banking industries that the retention
4 of the MLO License is predicated on compliance with the terms of this Stipulation for the period of
5 five (5) years from the effective date of this Stipulation. Respondent hereby agrees to submit proof
6 of that disclosure in the Compliance Report.

7 8. Supervision. Respondent shall be under the supervision and control of a licensee of
8 the Department or the California Bureau of Real Estate when employed as a mortgage loan
9 originator for the period of five (5) years from the effective date of this Stipulation. Respondent
10 shall submit confirmation of employment and supervision in the Compliance Report.

11 9. Compliance Report. Respondent agrees to submit proof of compliance with this
12 Stipulation (“Compliance Report”) annually to the Department of Business Oversight, Timothy L.
13 Le Bas, 1515 K Street, Suite 200, Sacramento, CA 95814. Respondent shall submit the reports to
14 the Department by way of first class United States mail. Compliance Reports are due and must be
15 received on each of the following dates: October 1, 2017; October 1, 2018; October 1, 2019;
16 October 1, 2020; and October 1, 2021. Compliance Reports shall contain the following:

- 17 i. Proof of continuing education classes completed.
- 18 ii. Proof of payment of the Administrative Costs.
- 19 iii. Proof of disclosure of this Stipulation to prospective and current employers in
20 or associated with the real estate, mortgage, financial lending, and banking industries.
- 21 iv. Proof that Respondent, if employed as an MLO, is under the supervision and
22 control of a licensee.
- 23 v. Report any arrest or conviction of any misdemeanor or felony.
- 24 vi. Report any action taken by any state or federal regulator against Respondent
25 alleging Respondent violated or is violating any provision of the CRMLA, California Finance
26 Lender Law, or any other state or federal law in his employment as a mortgage loan originator.

27 Failure to report on the above list of issues or failure to disclose any item listed above will
28 constitute a violation of this Stipulation.

1 10. Application Disclosures. Respondent agrees to timely update each and every
2 question and required disclosure in his annual mortgage loan originator license renewal applications
3 for as long as he holds a license. With respect to any future applications, Respondent agrees to
4 answer “yes” to questions (K)(1), (K)(9), and (L), and to disclose the actions taken against him by
5 the California State Bar.

6 11. Commissioner’s Remedy for Violation. Respondent agrees that for five (5) years
7 immediately following the Effective Date of this Stipulation, if the Commissioner makes a finding
8 that Respondent has violated or is violating any provision of this Stipulation, or of the CRMLA or
9 CPLL, and Respondent fails to cure said violation(s) within ten (10) days after being provided written
10 notice of said violation(s) by the Commissioner, the Commissioner may, in her sole discretion, issue
11 to Respondent a final order revoking Respondent’s Mortgage Loan Originator license. Respondent
12 waives all notice and hearing rights to contest any revocation order issued pursuant to this provision,
13 which may be afforded under the CRMLA, the CPLL, the Administrative Procedures Act, the Code
14 of Civil Procedure, or any other provision of law in connection with these matters.

15 12. Stipulation Coverage. The parties hereby acknowledge and agree that this Stipulation
16 is intended to constitute a full, final, and complete resolution of the matter set forth herein and that no
17 further proceedings or actions will be brought by the Commissioner in connection with these matters
18 under the CRMLA or any other provision of law, excepting therefrom any proceeding or action if
19 such proceeding or action is based upon facts not presently known to the Commissioner or which
20 were knowingly concealed from the Commissioner by Respondent.

21 13. Commissioner’s Duties. The parties acknowledge and agree that nothing contained in
22 this Stipulation shall operate to limit the Commissioner's ability to assist any other agency, (county,
23 state or federal) with any prosecution, administrative, civil or criminal, brought by any such agency
24 against Respondent or any other person based upon any of the activities alleged in this matter or
25 otherwise.

26 14. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
27 has sought independent advice from an attorney(s) and/or representative with respect to the
28 advisability of executing this Stipulation.

1 15. Reliance. Each of the parties represents, warrants, and agrees that in executing this
2 Stipulation it has relied solely on the statements set forth herein and the advice of its own counsel
3 and/or representative. Each of the parties further represents, warrants, and agrees that in executing
4 this Stipulation it has placed no reliance on any statement, representation, or promise of any other
5 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or
6 any other person or entity to make any statement, representation or disclosure of anything
7 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in any
8 way fraudulently induced to execute this Stipulation; and (2) to preclude the introduction of parol
9 evidence to vary, interpret, supplement, or contradict the terms of this Stipulation.

10 16. Full Integration. This Stipulation is the final written expression and the complete and
11 exclusive statement of all the agreements, conditions, promises, representations, and covenants
12 between the parties with respect to the subject matter hereof, and supersedes all prior or
13 contemporaneous agreements, negotiations, representations, understandings, and discussions between
14 and among the parties, their respective representatives, and any other person or entity, with respect to
15 the subject matter covered hereby.

16 17. No Presumption from Drafting. In that the parties have had the opportunity to draft,
17 review and edit the language of this Stipulation, no presumption for or against any party arising out
18 of drafting all or any part of this Stipulation will be applied in any action relating to, connected, to, or
19 involving this Stipulation. Accordingly, the parties waive the benefit of California Civil Code section
20 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a
21 contract should be interpreted most strongly against the party who caused the uncertainty to exist.

22 18. Headings and Governing Law. The headings to the paragraphs of this Stipulation are
23 inserted for convenience only and will not be deemed a part hereof or affect the construction or
24 interpretation of the provisions hereof.

25 19. Counterparts. This Stipulation may be executed in one or more counterparts, each of
26 which shall be an original but all of which, together, shall be deemed to constitute a single document.
27 This Stipulation may be executed by facsimile signature, and any such facsimile signature by any
28 party hereto shall be deemed to be an original signature and shall be binding on such party to the

1 same extent as if such facsimile signature were an original signature.

2 20. Settlement Authority. Each signator hereto covenants that he/she possesses all
3 necessary capacity and authority to sign and enter into this Stipulation.

4 21. Effective Date. This Stipulation shall become effective (Effective Date) when
5 executed by the Commissioner or her designee and transmitted by electronic mail to Respondent at
6 kennethjschwartz@yahoo.com.

7 22. Notice. Any notices required from Respondent under this Stipulation shall be
8 provided to:

9 Timothy L. Le Bas, Senior Counsel
10 Department of Business Oversight
11 Enforcement Division
12 1515 K Street, Suite 200
13 Sacramento, CA 95814

14 Dated: 9/20/16

JAN LYNN OWEN
Commissioner of Business Oversight

17 By _____
18 MARY ANN SMITH
19 Deputy Commissioner

20 Dated: 9/12/16

21 By _____
22 KENNETH JAY SCHWARTZ, an individual