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California Corporations Commissioner
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8

9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA
11

12 In the Matter of the Accusation of THE) Case No.: 413-0088
CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) ACCUSATION
14)
Complainant,)
15)
16 vs.)
17 WELLS FARGO HOME MORTGAGE, INC.,)
18 Respondent.)
19 _____)

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

22 I

23 1. Respondent Wells Fargo Home Mortgage, Inc. ("Wells Fargo") is a residential
24 mortgage lender and loan servicer licensed by the California Corporations Commissioner
25 ("Commissioner") pursuant to the California Residential Mortgage Lending Act (California
26 Financial Code § 50000 et seq.) ("CRMLA"). Wells Fargo has its main office located at 405 SW 5th
27 Street; MS 122457, Des Moines, Iowa 50328. Wells Fargo currently has 896 branch office locations
28 under its CRMLA license located throughout California, and other states.

1 2. On or about April 17, 2001, the Commissioner commenced a regulatory examination
2 of the books and records of Wells Fargo (“2001 regulatory examination”) for the period beginning
3 on December 6, 1999. The regulatory examination disclosed that in four out of twenty-three, or
4 approximately seventeen and one-half percent (17.5%) of the loans reviewed, Wells Fargo was
5 charging the borrower per diem interest in excess of one day prior to the recording of the mortgage
6 or deed of trust in violation of California Financial Code section 50204(o). The per diem interest
7 overcharges averaged \$279.33 per loan. The range of per diem interest overcharges was between
8 \$103.58 and \$476.99. The range of days that interest was overcharged was between one and five.

9 3. The 2001 regulatory examination also disclosed that Wells Fargo had understated the
10 finance charges in excess of the \$100.00 tolerance allowed under 12 Code of Federal Regulations,
11 section 226.18 in nine out of twenty-five, or approximately thirty-six percent (36%) of the loans
12 reviewed in violation of California Financial Code sections 50204(i), 50204(k) and 50204(j). It was
13 difficult for the Commissioner to determine the exact cause of the understatements in that Wells
14 Fargo does not maintain Truth In Lending calculations on all its loans, and also adds a \$35.00
15 cushion to the calculation. However, the finance charge understatements appeared to be due mainly
16 to the failure of Wells Fargo to include settlement fees. The finance charge understatements
17 averaged \$910.44. The range of finance charge understatements was between \$115.00 and
18 \$2,174.14.

19 4. On or about April 9, 2002, the Commissioner commenced a follow-up to the 2001
20 regulatory examination of the books and records of Wells Fargo in order to review a larger sample of
21 loans in regard to the issue of per diem overcharges and finance charge understatements (“2002
22 follow-up). The 2002 follow-up disclosed that in thirteen out of one-hundred, or thirteen percent
23 (13%) of the loans reviewed for the period between January 1, 2001 and December 31, 2001, Wells
24 Fargo was charging the borrower per diem interest in excess of one day prior to the recording of the
25 mortgage or deed of trust in violation of California Financial Code section 50204(o). The per diem
26 interest overcharges averaged \$156.79 per loan. The range of per diem interest overcharges was
27 between \$30.89 and \$854.38. The range of days that per diem interest was overcharged was
28 between one and six.

1 5. The 2002 follow-up further disclosed that Wells Fargo had understated finance
2 charges in excess of the \$100.00 tolerance allowed under 12 Code of Federal Regulations, section
3 226.18 in twenty-five out of one-hundred and forty-six, or approximately seventeen percent (17%)
4 of the loans reviewed for the period between January 1, 2000 and December 31, 2001 in violation of
5 California Financial Code sections 50204(i), 50204(k) and 50204(j). The finance charge
6 understatements were again due mainly to the failure of Wells Fargo to include settlement fees. The
7 finance charge understatements averaged \$506.80. The range of finance charge understatements was
8 between \$182.50 and \$1,350.52.

9 6. The Commissioner found that Wells Fargo was understating finance charges during
10 the last regulatory examination that commenced in December 1999. Based upon the findings of the
11 1999 regulatory examination, the Commissioner had instructed Wells Fargo to implement such
12 procedures as necessary to ensure that finance charges were not understated in the future.

13 7. In March 2002, in response to the findings of the 2001 regulatory examination, Wells
14 Fargo informed the Commissioner that it had modified the programming on its origination system in
15 December 2000 to include all settlement/closing fees in its finance charge calculations. The
16 representation by Wells Fargo as to the date it modified the origination programming was
17 subsequently changed to March 2001 after Wells Fargo was notified that the Commissioner had
18 found loans originated in February 2001 that continued to understate finance charges by the
19 settlement fees. Notwithstanding, the Commissioner has found loans originated in April, May, June,
20 July and August 2001 that also understated finance charges by the settlement fees. The findings of
21 the 2001 regulatory examination and 2002 follow-up disclose that despite Wells Fargo's assurances
22 to the contrary, it had failed to implement procedures to ensure that finance charges would not be
23 understated.

24 8. On or about December 18, 2001 and February 27, 2002, the Commissioner, based
25 upon the findings of the 2001 regulatory examination directed Wells Fargo to conduct a self-audit in
26 the areas noted above on all its loans made since December 6, 1999, make appropriate refunds, and
27 submit a report as to the findings of the self-audit to the Commissioner. The Commissioner's
28 demand was amended on December 3, 2002 to include only loans made since January 1, 2001.

1 Notwithstanding several written demands, Wells Fargo has refused to perform the self-audit.

2 9. Although Wells Fargo continually resisted the performance of any self-audit with
3 respect to the per diem interest overcharge issue, and later the issue of understating finance charges,
4 Wells Fargo never contested, or otherwise claimed that it was not subject to, the jurisdiction of the
5 Commissioner as a licensee of the CRMLA until on or about January 22, 2003.

6 10. On or about January 27, 2003, Wells Fargo filed a civil lawsuit seeking injunctive and
7 declaratory relief against the Commissioner alleging, among other things, that the CRMLA was
8 preempted as to Wells Fargo pursuant to federal law, and thus, the Commissioner had no authority to
9 regulate, supervise, examine or enforce the CRMLA against Wells Fargo.

10 11. The claim by Wells Fargo that the CRMLA is preempted with respect to Wells Fargo,
11 if made by Wells Fargo when originally seeking a license from the Commissioner under the
12 CRMLA, would have precluded Wells Fargo from complying with the license application
13 requirements of Financial Code section 50124, and would have constituted grounds for the
14 Commissioner to deny the license application under California Financial Code section 50125. Thus,
15 a fact or condition now exists that, if it had existed at the time of the original application, reasonably
16 would have warranted the Commissioner in refusing to issue the license.

17 **II**

18 California Financial Code section 50124 provides in pertinent part as follows:

19 (a) A license application must be accompanied by an exhibit containing
20 statements that the applicant agrees to do the following:

21 (3) To file with the commissioner any report required under law or by rule
22 or order of the commissioner.

23 (7) To comply with the provisions of this division, and with any order or
24 rule of the commissioner.

25 (8) To submit to periodic examination by the commissioner as required by
26 this division.

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California Financial Code section 50204 provides in pertinent part as follows:

A licensee may not do any of the following:

...

(i) Engage in any acts in violation of Section 17200 or 17500 of the Business and Professions Code.

(j) Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which it is a party.

(k) Do an act, whether of the same or a different character that specified in this section, that constitutes fraud or dishonest dealings.

...

(o) Require a borrower to pay interest on the mortgage loan for a period in excess of one day prior to recording of the mortgage or deed of trust. . . .

California Financial Code section 50307(b) provides as follows:

(b) A licensee shall make any other special reports to the commissioner that the commissioner may, from time to time, require.

III

California Financial Code section 50327 provides in pertinent part:

(a) The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license, if the commissioner finds that: (1) the licensee has violated any provision of this division or rule or order of the commissioner thereunder; or (2) any fact or condition exists that, if it had existed at the time of the original application for license, reasonably would have warranted the commissioner in refusing to issue the license originally.

IV

The Commissioner finds that, by reason of the foregoing, Wells Fargo has violated California Financial Code sections 50204, subdivision (i), (j), (k) and (o) and 5037(b), and a fact or condition now exists, that if it had existed at the time of original licensure, reasonably would have warranted the Commissioner in refusing to issue the license, and based thereon, grounds exist to revoke the residential mortgage lender and loan servicer license of Wells Fargo.

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WHEREFORE, IT IS PRAYED that the residential mortgage lender and loan servicer license of Wells Fargo be revoked.

Dated: February 4, 2003
Los Angeles, California

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel