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DEPT. OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

11 In the Matter of the Application of
12 OCTAVIO PONCE MERCADO,
13 Respondent.

DRE No. H-42004 LA

STATEMENT OF ISSUES

Mortgage Loan Originator (MLO)
License Endorsement

16 The Complainant, Ruth Corral, a Supervising Special Investigator of the State of
17 California, for cause of Statement of Issues against OCTAVIO PONCE MERCADO,
18 (Respondent), alleges as follows:

19 1. The Complainant, Ruth Corral, a Supervising Special Investigator of the
20 Department of Real Estate¹ (Department), State of California, makes this Statement of Issues in
21 her official capacity.

22 2. Unless otherwise noted, all references to the "Code" are to the California
23 Business and Professions Code, all references to the "Real Estate Law" are to Part 1 of Division
24

¹ Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

1 4 of the Code, and all references to "Regulations" are to the Regulations of the Real Estate
2 Commissioner, Title 10, Chapter 6, California Code of Regulations.

3 Statement of Facts

4 3. Respondent is presently licensed and/or has license rights under the Real Estate
5 Law (Part 1 of Division 4 of the Code).

6 4. On June 25, 2008, the Department issued a real estate broker license to
7 Respondent, License ID 01429126. Respondent was previously licensed as a real estate
8 salesperson from April 14, 2004 through June 24, 2008.

9 5. On October 7, 2008, the Department issued a corporation license to Empire of
10 Stars Commercial and Residential Real Estate Services, Inc. (Empire), License ID 01853246.

11 6. At all times relevant herein, Respondent acted as the designated officer for
12 Empire.

13 Prior License Disciplinary Action - Department Case No. H-40570 LA

14 7. On March 8, 2017, the Department filed an Accusation against Respondent and
15 Empire in Department Case No. H-40570 LA.

16 8. The Department's Accusation in Case No. H-40570 LA alleged that Respondent
17 improperly charged and collected advance fees or compensation prior to fully performing the
18 services Respondent contracted or represented to perform, and failed to provide an accounting
19 for, or timely refund of trust funds belonging to another, in violation of Code sections 10085,
20 10085.5, 10145, 10146, and Regulations 2970 and 2972. The Accusation also alleged that
21 Respondent and Empire failed to comply with trust fund handling requirements including that
22 they commingled advance fees with Respondent's general funds; failed to maintain required
23 records and comply with accounting requirements; failed to submit and maintain an approved
24 advance fee agreement; failed to disclose Respondent's accurate Department license ID number
on residential purchase agreements; and used unlicensed false or fictitious business names, in

1 violation of Code sections 10085, 10140.6, 10145, 10146, 10159.5, 10176(e), 10177(d),
2 10177(g), and Regulations 2731, 2773, 2831, 2832, 2970, and 2972.

3 9. On December 4, 2017, Respondent, Empire, and the Department entered into a
4 Stipulation and Agreement in which they agreed, inter alia, that the allegations in the
5 Department's Accusation constituted cause for discipline of Respondent's real estate license.
6 Respondent's license was suspended for six months, said suspension was stayed upon certain
7 terms and conditions including that: 1) Respondents pay the Department's investigation and
8 enforcement costs, audit costs, and subsequent audit costs; 2) Respondent complete continuing
9 education courses, including a course on trust fund accounting and handling; and 3) Respondent
10 take and pass the Professional Responsibility Examination within six months of the effective
11 date of the Stipulation and Agreement.

12 Mortgage Loan Originator (MLO) Application

13 10. On or about August 6, 2020, Respondent submitted an Individual (MU4)
14 application through the Nationwide Mortgage Licensing System and Registry ("NMLS") for a
15 MLO license endorsement.

16 11. The "Disclosure Questions" section of the MU4 application contains the
17 following questions:

18 A. Financial Disclosure

19 (A)(3) "Have you been the subject of a foreclosure action within
20 the past 10 years?"

21 B. Regulatory Action

22 (K)(6) "Has any State or federal regulatory agency or foreign
23 financial regulatory authority or self-regulatory organization (SRO) ever:
24 denied or suspended your registration or license or application for
licensure, disciplined you, or otherwise by order, prevented you from

1 associating with a financial services-related business or restricted your
2 activities?"

3 (M) "Based upon activities that occurred while you exercised
4 control over an organization, has any State or federal regulatory agency or
5 foreign financial regulatory authority or self-regulatory organization
6 (SRO) ever taken any of the actions listed in (K) through (L) above
7 against any organization?

8 12. Respondent answered "yes" in response to Question (A)(3) of the Financial
9 Disclosure section of Respondent's MLO license endorsement application.

10 13. Respondent answered, "No," in response to all of the questions in the Regulatory
11 Action section of Respondent's MLO license endorsement application. Respondent failed to
12 disclose the disciplinary action and suspension of Respondent's real estate license as described
13 above in Paragraphs 7 through 9.

14 Grounds for Denial of MLO Application

15 14. Respondent's failure to disclose a prior disciplinary action and suspension of
16 Respondent's real estate license in Respondent's MLO application constitutes withholding
17 information and/or making a material misstatement in an application for a MLO license
18 endorsement.

19 15. Respondent's prior violations, license discipline, foreclosures, financial, and
20 professional conditions impact Respondent's ability to meet the requirements of Code section
21 10166.05, subdivision (c), and Regulation 2758.3.

22 16. The facts alleged in Paragraphs 2 through 15, above, constitute cause for denial
23 of Respondent's application for a MLO license endorsement under Code section 10166.051,
24 subdivision (b) (failure to meet the requirements of section 10166.05, or withholds information
or makes a material misstatement in an application for a license endorsement or license

1 endorsement renewal), Code section 10166.05, subdivision (c) (financial responsibility,
2 character, and general fitness), Code section 10177, subdivision (a) (material false statement on
3 application), Code section 480, subdivision (e) (false statement), Regulation 2945.2, subdivision
4 (b) (prior suspension), and Regulation 2758.3, in that Respondent has failed to demonstrate such
5 financial responsibility, character and general fitness as to command the confidence of the
6 community and to warrant a determination that the mortgage loan originator will operate
7 honestly, fairly, and efficiently within the purposes of Article 2.1 of the Real Estate Law.

8 17. These proceedings are brought under the provisions of Section 10100, Division 4
9 of the Business and Professions Code of the State of California and Sections 11500 through
10 11528 of the California Government Code.

11 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
12 Statement of Issues, and that upon proof thereof, a decision be rendered that the Commissioner
13 refuse to authorize the issuance of, and deny the issuance of, an MLO license endorsement to
14 Respondent OCTAVIO PONCE MERCADO and for such other and further relief as may be
15 proper under the provisions of law.

16 Dated at Sacramento, California this 8th day of July, 2021.

17
18
19 
20 Ruth Corral
Supervising Special Investigator

21
22 cc: Octavio Ponce Mercado
23 Ruth Corral
24 Sacto.