BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. LOAN FUNDING CORPORATION OF AMERICA, Respondent.	)	File No. 413-0217 OAH NO. L-2003120508

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated August 17, 2004, is hereby adopted by the California Corporations Commissioner as his Decision in the above-entitled matter with the following technical and minor changes pursuant to Government Code Section 11517(c)(2)(C):

(1) The name "Los Angeles" is substituted for "Los Angles" in the second line of the first paragraph of PROPOSED DECISION on page 1 of the Proposed Decision.

(2) The words "the California Corporations Commissioner" are substituted for "Demetrious Butris, Commissioner of Corporations" in the third line of paragraph number 1 of FACTUAL FINDINGS on page 1 of the Proposed Decision.

(3) The word "The" is deleted from the first line of paragraph number 2 of FACTUAL FINDINGS on page 2 of the Proposed Decision.

(4) "(Fin Code § 50000 *et seq.*)" is substituted for "(Fin Code § 5000 *et seq.*)" in the third line of paragraph number 2 of FACTUAL FINDINGS on page 2 of the Proposed Decision.

(5) The word "a" is deleted from the second line of paragraph number 4 of FACTUAL FINDINGS on page 2 of the Proposed Decision.

(6) The words "process to" are inserted before the word "completion" in the first line of the paragraph numbered "2" in the quotation inserted in paragraph number 7 of FACTUAL FINDINGS on page 3 of the Proposed Decision.

(7) The word "(sic)" following the word "completion" is deleted from the first line of the paragraph numbered "2" in the quotation inserted in paragraph number 7 of FACTUAL FINDINGS on page 3 of the Proposed Decision.

(8) The word "applications" is substituted for the word "application" in the first line of the paragraph numbered "2" in the quotation inserted in paragraph number 7 of FACTUAL FINDINGS on page 3 of the Proposed Decision.

(9) The word "commissioner" is capitalized in the fifth line of paragraph number 13 of DISCUSSION on page 4 of the Proposed Decision.

(10) The second set of the words "during the" is deleted from the second line of paragraph number 14 of DISCUSSION on page 4 of the Proposed Decision.

(11) The word "commissioner" is capitalized in the second line of paragraph number 15 of DISCUSSION on page 5 of the Proposed Decision.

(12) The word "commissioner's" is capitalized in the first line of the paragraph comprising LEGAL CONCLUSIONS on page 5 of the Proposed Decision.

This Decision shall become effective on NOV 2 4 2004.

IT IS SO ORDERED NOV 2 4 2004.

WILLIAM P. WOOD
California Corporations Commissioner

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. LOAN FUNDING CORPORATION OF AMERICA, Respondent.	)	File No. 4130217 OAH NO. L2003120508

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings on July 12, 2004, in Los Angles California.

Complainant was represented by Sean M. Rooney, Counsel for the Department of Corporations.

William Lange, President and Director of Loan Funding Corporation of America appeared and represented Loan Funding Corporation of America ("respondent").

Oral and documentary evidence was received and the matter was left open for one week to allow complainant's counsel to cite legal authority for the standard of proof to be applied in these proceedings. Counsel did not submit legal authority for the standard of proof. The matter was deemed submitted on July 19, 2004.

FACTUAL FINDINGS

1. DiAun Burns, in her official capacity as Special Administrator for the California Residential Mortgage Lending Act, Department of Corporations ("Department"), made the Accusation on behalf of Demetrious Butris, Commissioner of Corporations ("Commissioner").

2. The Loan Funding Corporation of America was a residential mortgage lender and/or servicer licensed by the Commissioner pursuant to the California Residential Mortgage Lending Act ("CRMLA"). (Fin Code § 5000 *et seq.*)

3. Pursuant to Financial Code section 50401, all licensees under the CRMLA are required to pay an annual assessment in an amount determined by the Commissioner. As set forth in section 50401, subdivision (a), the amount of the assessment is equal to the lesser of: (1) the licensee's pro rata share of all costs and expenses that the Commissioner reasonably expects to incur in the current fiscal year in administering the CRMLA, plus a deficit or less a surplus actually incurred during the prior fiscal year; or (2) five thousand dollars ($5,000.00). The Commissioner is required to give notice of the assessment to each licensee by September 30 of each year, and licensees are required to pay the assessment within 20 days after receiving notice. If a licensee fails to pay this assessment within 30 days after the due date, Financial Code section 50401, subdivision (d), gives the Commissioner authority to summarily suspend or revoke the license.

4. On or about September 30, 2003, the Commissioner notified respondent of the amount of the annual assessment and directed respondent to pay a $5,000.00 within 20 days of the notice. Respondent did not pay the assessment as directed by the Commissioner.

5. Respondent asserts that it should not have to pay the assessment because it decided to terminate its business in October 2002, and has not engaged in licensed activity since April 2003. On October 22, 2002, William Lange, respondent's president, wrote a letter to the Department stating that respondent would cease originating all residential mortgage loans as of October 31, 2002. Mr. Lange also requested "cancellation" of respondent's license. However, the Commissioner has no record showing that the letter was received by the Department or the Commissioner. Mr. Lange did not "follow-up" on the October 22, 2002 letter because he had been focused on processing the outstanding loan applications and terminating the business.

6. On October 8, 2003, Mr. Lange wrote a second letter to the Department asserting that respondent was no longer engaged in licensed activities. Mr. Lange referenced and attached his October 22, 2002 letter to the Department.

7. On October 10, 2003, Ms. DiAun Burns, Special Administrator to the Department, wrote a letter to Mr. Lange informing him of the procedure and requirements for surrendering a license pursuant to Financial Code section 50123. This letter states in part:

"At a minimum, the plan shall contain the following:

1. The closing audit performed by your certified public accountants. Section 50123 (FC) provides for closing audit to be performed by a CPA. The closing audit should contain the following:

a. A statement to the effect that all custodial account funds have been disbursed with proper authorization. The auditor should be satisfied that the funds were taken into income or transferred to the corporation general account.

b. A copy of the trust account bank reconciliations listing all outstanding checks.

2. A detailed description of the plan to completion (sic) any loan application pending which were received before the decision to surrender the license was made. In the alternative the plan may describe the process for cancellation of completion of the loan by another licensee or exempt person.

3. A detailed description of the plan to transfer the licensee's existing servicing portfolio, including the time frame within which the transfer will be completed

4. Surrender the actual license issued by the Department.

5. All regulatory and administrative matters with the Department must be completed."

8. On October 29, 2003, Richard Bennett, the Chief Financial Officer for respondent, surrendered respondent's license to the commissioner, and submitted a closing plan for withdrawal along with an attached closing audit. In respondent's plan for withdrawal, Mr. Bennett noted that "The decision to withdraw from the mortgage business was made in 2002. No prospecting for loans occurred in 2003, and by April 2003 all of the loan files had been closed, declined or cancelled." The plan also indicated that all loans funded by respondent were sold to third parties and did not require servicing. As a result, respondent did not keep a servicing portfolio. Finally, the plan and the attached statement by respondent's certified public accountant, indicated that respondent, in the course of its business, had never accepted funds that were required to be held in a trust account.

9. Rather than conducting a review of respondent's plan for withdrawal, the commissioner informed respondent that it would not accept surrender of respondent's license because respondent was in violation of the CRMLA for failing to pay the assessment for the 2003/2004 fiscal year.

10. On November 3, 2003, the Commissioner sent a second written notice to respondent directing respondent to pay the annual assessment on or before December 1, 2003. The Commissioner also informed respondent that if payment was not made by the specified date, respondent's license would be summarily revoked pursuant to Financial Code section 50401, subdivision (e). It should be noted that on July 5, 2000, Financial Code section 50401 was amended by A.B. 2403. The provision for summary revocation is now contained in subdivision (d), which states in pertinent part:

"(d) If a licensee fails to pay the assessment on or before the 30th day * * * following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the license issued to the licensee..."

11. On November 3, 2003, pursuant to Financial Code section 50401, DiAun Burns, on behalf of the Commissioner, issued an order summarily revoking respondent's residential mortgage lending license. Said order was to become effective December 2, 2003, unless respondent paid the annual assessment on or before December 1, 2003. Respondent did not pay the assessment as directed. As a result, the order summarily revoking respondent's residential mortgage lending license became effective December 2, 2003.

12. There were no allegations that respondent has previously violated any statutes enacted to protect consumers. Further, respondent has no history of disciplinary action against its license.

DISCUSSION

13. Based on a review of CRMLA, and the legislative history of the enactment of the law, a licensee is required to pay the annual assessment for the current fiscal year, whether or not the licensee is actually conducting business during the relevant year. The legislature did not make an exception for licensees who are no longer originating residential mortgage loans. In this case, the commissioner sought payment from respondent, of an assessment for the 2003/2004 fiscal year. Although respondent terminated its residential mortgage loan business as of April 2003, it did not follow the requirements for surrender of a license as set forth in Financial Code section 50123. That section states in pertinent part:

"(a) A license shall remain in effect until suspended, surrendered, or revoked.

"(b) A licensee that ceases to engage in the business regulated by this division and desires to no longer be licensed shall inform the commissioner in writing, and, at that time, surrender the license and all other indicia of licensure to the commissioner. The licensee shall file a plan for withdrawal from regulated business, including a timetable for disposition of the business and a closing audit performed by a certified public accountant. Upon receipt of the written notice and plan, the commissioner shall review the plan and, if satisfactory to the commissioner, shall accept the surrender of the license. A license is not surrendered until its tender is accepted in writing by the commissioner after a review, and a finding has been made on the licensee's plan required to be filed by this section, and a determination has been made that there is no violation of the law."

14. Respondent failed to submit a timely plan for withdrawal. Therefore, respondent was still licensed during the during the 2003/2004 fiscal year. As a result, respondent was required to pay the assessment, and failure to do so placed respondent in violation of the CRMLA, and subjected its license to summary revocation pursuant to Financial Code section 50401, subdivision (d).

15. The undersigned has considered the efforts made by respondent to comply with the law once it was made aware of the assessment. However, the commissioner has the discretion to seek summary revocation when a licensee fails to pay the annual assessment.

LEGAL CONCLUSIONS

Cause exists to affirm the commissioner's order to summarily suspend or revoke respondent's license to act as a residential mortgage lender and/or servicer under Financial Code section 50401, based on findings 1 through 15.

ORDER

1. The order summarily revoking the residential mortgage lender and/or servicer license previously issued to Loan Funding Corporation of America is affirmed.

2. The residential mortgage lender and/or servicer license previously issued to Loan Funding Corporation of America is revoked.

DATED: August 17, 2004

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings