

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
NEVADA CONSUMER AFFAIRS UNIT

In the Matter of:

CASE NO.: 2019-014

DAVID ANTHONY RANDALL,
Mortgage Agent License No. 48881,
NMLS ID No. 818351,

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Respondent.

On May 14, 2021, a properly noticed hearing in the above-captioned matter was held before Dana A. Grigg, Esq., serving in her capacity as the Hearing Officer in accordance with Chapter 645B of the Nevada Revised Statutes (“NRS”), and Chapter 645B of the Nevada Administrative Code (“NAC”). The hearing was conducted through the videoconferencing system WebEx.¹

Present at the May 14, 2021, Hearing, were Dana A. Grigg, Esq., Hearing Officer; Yvonne Prieto, Legal Secretary II, Division of Insurance; Cathy Sheehy, Commissioner of Mortgage Lending Division (“MLD”); Nixon Medina, Investigator, MLD; Michelle D. Briggs, Esq., Sr. Deputy Attorney General, Office of the Nevada Attorney General, counsel for MLD; Christine Derassoyan, Compliance Manager, SunWest Mortgage Company, Inc. (“SunWest”); and David Randall, Respondent.

After hearing the allegations and the respective arguments of the parties, and having considered all the evidence introduced and admitted, the undersigned Hearing Officer finds and concludes as follows.

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¹ Pursuant to Governor Sisolak’s March 22, 2020 Declaration of Emergency Directive 006 (extended by Declaration of Emergency Directive 029), the requirement contained in NRS 241.023.1(b) that there be a physical location designated for meetings of public bodies where members of the public are permitted to attend and participate is suspended in order to mitigate the possible exposure or transmission of COVID-19 (Coronavirus). Accordingly, anyone planning to participate must participate by using WebEx.

1 **I. PROCEDURAL HISTORY**

2 This matter commenced February 11, 2020, when the MLD issued Notice of Intent to
3 Issue and Enter Final Order Revoking Mortgage Agent License, Imposing Administrative Fine,
4 Requiring Payment of Investigative Costs, and Notice of Opportunity for Hearing (“Complaint”).
5 On December 13, 2020, Respondent, pro per, filed a request for an Administrative Hearing. On
6 April 13, 2021, the Prehearing order was issued, setting the hearing date and associated deadlines.

7 **II. WITNESSES**

8 **DAVID ANTHONY RANDALL, Respondent:** David Anthony Randall (“Respondent”)
9 provided testimony at the Hearing on his behalf.

10 **NIXON MEDINA, Investigator, MLD:** Nixon Medina (“Medina”) provided testimony
11 at the Hearing on behalf the MLD regarding the Complaint and investigation into the matter.
12 Medina testified that Respondent responded to the request sent by the MLD, and that he did not
13 believe Respondent made an inadvertent error.²

14 **CHRISTINE DERASSOYAN, Compliance Manager, SunWest:** Christine
15 Derassoyan (“Derassoyan”) provided testimony at the Hearing regarding the Suspicious Activity
16 reported by SunWest to MLD regarding Respondent.³

17 **III. EXHIBITS**

18 Respondent and counsel for the MLD stipulated to the admission of the MLD’s exhibits
19 1-8. The Hearing Officer admitted the following MLD’s exhibits into evidence:

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27 ² MLD’s Exhibit 4, pages 0019 and MLD’s Exhibit 5, pages 0020-22.
28 ³ MLD’s Exhibit 1, pages 001-11.

Exhibit		
1	0001-0011	Suspicious Activity Report from SunWest Mortgage
2	0016	January 29, 2019 Letter to Castle & Cooke Mortgage
3	0017-0018	February 11, 2019 Letter from Castle & Cooke
4	0019	February 14, 2019 Letter to David Randall
5	0020-0022	Letter from David Randall (Received Mar. 1, 2019)
6	0047-0053	March 4, 2019 Letter to Angie Rodriguez
7	0023	Email dated March 4, 2019 from Angie Rodriguez
8	0054-0060	License Disclosure

IV. FINDINGS OF FACTS

There is substantial evidence in the record, which contains the legal evidence presented at the Hearing, to establish each of the facts hereinafter set forth in these Findings of Fact:

1. On January 24, 2019, SunWest reported suspicious activity to the MLD regarding a loan application submitted by Castle & Cooke Mortgage, LLC (“Castle & Cooke”) naming Respondent as the Mortgage Loan Originator (“January 24, 2019 Suspicious Activity Letter”).⁴ The report details that Respondent uploaded three different letters to SunWest’s loan management system: one on December 28, 2018,⁵ the second on January 3, 2019,⁶ and the third on January 4, 2019,⁷ signed by Angie Rodriguez (“Rodriguez”), the Director of Human Resources for the Borrower’s employer. The report also details that on January 17, 2019, a SunWest representative called Rodriguez; at that time, Rodriguez informed SunWest that she did not write the letters on January 3, 2019 or January 4, 2019. Rodriguez provided the letter to SunWest as she provided it

⁴ MLD’s Exhibit 1, pages 001-0011.

⁵ MLD’s Exhibit 1, page 0005.

⁶ MLD’s Exhibit 1, page 0007.

⁷ MLD’s Exhibit 1, page 0009.

1 to the Respondent.⁸ Shortly after, SunWest declined the borrower’s loan and reported the matter
2 to MLD and the Nevada Attorney General.

3 2. On January 29, 2019, the MLD requested information from Samantha Bateman
4 (“Bateman”), Director of Compliance of Castle & Cooke in regards to SunWest’s January 24,
5 2019 report.⁹

6 3. On February 11, 2019 (“February 11, 2019 letter from Castle & Cooke”), Bateman
7 responded to the MLD with a signed affidavit stating that Castle & Cooke’s Human Resource
8 department made three attempts to contact Respondent. On the final attempt, Respondent spoke
9 to Katie Evans, Castle & Cooke’s Human Resource Manager and stated that he “didn’t remember
10 anything about the letter and refused to comment more than that.” Bateman’s letter also stated
11 that Castle & Cooke denied the borrower’s file on January 23, 2019 “for reasons of unverifiable
12 income.”¹⁰

13 4. On February 14, 2019, Medina sent a letter to the Respondent inquiring about his
14 termination from Castle & Cooke and the allegations that Respondent fabricated employment
15 verification letters in violation of NRS 645B.670 1(c)(2)(8).¹¹

16 5. On March 1, 2019, MLD received Respondent’s response (“Letter from David
17 Randall”) to the MLD’s letter sent on February 14, 2019.¹² Respondent stated that “the incident
18 in question was, simply put, an inadvertent error on my behalf.”¹³ Respondent admitted to adding
19 a sentence to the borrower’s original letter signed by Rodriguez and also admitted to uploading
20 the revised letter. Respondent also stated that he “in no way intended to mislead or falsify
21 information” regarding the borrower’s income.¹⁴ Respondent concludes with: “[t]he
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25 ⁸ MLDs Exhibit 1, page 0011.

26 ⁹ MLD’s Exhibit 2, page 0016.

27 ¹⁰ MLD’s Exhibit 3, pages 0017-0018.

28 ¹¹ MLD’s Exhibit 4, page 0019.

¹² MLD’s Exhibit 5, pages 0020-0021.

¹³ MLD’s Exhibit 5, page 0020.

¹⁴ MLD’s Exhibit 5, page 0020.

1 document in question, while not wholly completed by the authorized individual, did not provide
2 any false information or attempt to derive inaccurate income calculations.”¹⁵

3 6. On March 4, 2019, Medina sent a letter to Rodriguez inquiring as to the three separate
4 letters uploaded by Respondent.¹⁶

5 7. On March 4, 2019, Rodriguez responded to Medina in an email stating that she only
6 prepared the first letter dated December 28, 2018 and did not prepare either of the two other
7 versions.¹⁷

8 8. The MLD provided a report ran on April 28, 2021 reflecting the Individual Snapshot
9 and License Disclosures of Respondent as of January 10, 2020.¹⁸ In the State Disclosure
10 Questions, Respondent answered “Yes” to the question “Is there a pending regulatory action
11 proceeding against you for any alleged violation described in (K) through (L)?”¹⁹ Respondent
12 answered “No” to the question “Have you ever voluntarily resigned, been discharged, or
13 permitted to resign after allegations were made that accused you of: (1) violating statute(s),
14 regulation(s), rule(s), or industry standards of conduct? (2) fraud, dishonesty, theft, or the
15 wrongful taking of property?”²⁰

16 **V. CONCLUSIONS OF LAW**

17 **A. Violation of NRS 645B.670(1)(c):**

18 NRS 645B.670(1)(c)(1),(2), and (8) state:

19 **NRS 645B.670 Authorized disciplinary or other action; grounds for 20 disciplinary action.**

21 1. Except as otherwise provided in NRS 645B.690:

22 ...

23 (c) For each violation committed by a mortgage loan originator, the Commissioner
24 may impose upon the mortgage loan originator an administrative fine of not more
25 than \$25,000, may suspend, revoke or place conditions upon the mortgage loan
26 originator’s license, or may do both, if the mortgage loan originator, whether or not
27 acting as such:

28 ¹⁵ MLD’s Exhibit 5, page 0021.

¹⁶ MLD’s Exhibit 6, pages 0047-0053.

¹⁷ MLD’s Exhibit 7, page 0023.

¹⁸ MLD’s Exhibit 8, pages 0054-0060.

¹⁹ MLD’s Exhibit 8, page 0058.

²⁰ MLD’s Exhibit 8, page 0059.

- 1 (1) Is grossly negligent or incompetent in performing any act for which the
2 mortgage loan originator is required to be licensed pursuant to the provisions of this
chapter;
3 (2) Has made a material misrepresentation in connection with any
transaction governed by this chapter;
4 ...
5 (8) Has engaged in any other conduct constituting a deceitful, fraudulent
or dishonest business practice;

6 The MLD asserts that Respondent violated NRS 645B.670(1)(c)(1),(2), and (8) by altering
7 a letter from his client's employer twice.²¹ Respondent admitted to adding a sentence to the letter
8 from his client's employer, and uploading the letter to SunWest without getting the approval of
9 the human resources director, Rodriguez.²² Also, Rodriguez stated in her March 4, 2019 email
10 to the MLD that she only prepared the first letter dated December 28, 2018.²³

11 Gross negligence is considered a question of fact as was held in *Kuser v. Barengo*, 70
12 Nev. 66, 254 P.2d 447, that where reasonable men could draw different inferences from the
13 evidence presented on the question of the existence of gross negligence, the question is one of
14 fact for the jury and not one of law for the court. *Cited in Troop v. Young*, 75 Nev 434, 345 P. 2d
15 226 at 436; *citing also Hart v. Kline*, 61 Nev. 96, 116 P.2d 672. *Hart v. Kline* at 674 defines gross
16 negligence:

17 The best and most comprehensive definition of gross negligence, distinguishing it
18 from ordinary negligence, and from a willful and intentional wrong, that we have
19 been able to find, was given in *Shaw v. Moore*, 104 Vt. 529, 162 A. 373, 374, 86
A.L.R. 1139. It is the accepted definition of gross negligence in that state, and is as
follows:

20 "Gross negligence is substantially and appreciably higher in magnitude and more
culpable than ordinary negligence. Gross negligence is equivalent to the failure to
21 exercise even a slight degree of care. It is materially more want of care than
constitutes simple inadvertence. It is an act or omission respecting legal duty of an
22 aggravated character as distinguished from a mere failure to exercise ordinary care.
It is very great negligence, or the absence of slight and palpable violation of legal
23 duty respecting the rights of others. The element of culpability which characterizes
all negligence is, in gross negligence, magnified to a higher degree as compared with
24 that present in ordinary negligence. Gross negligence is manifestly a smaller amount
of watchfulness and circumspection than the circumstances require of a prudent man.
25 But it falls short of being such reckless disregard of probable consequences as is
equivalent to a willful and intentional wrong. Ordinary and gross negligence differ

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27 ²¹ MLD's Exhibit 1, pages 004-0011.

²² MLD's Exhibit 5, page 0020.

28 ²³ MLD's Exhibit 7, page 0023.

1 in degree of inattention, while both differ in kind from willful diligence, or the want
2 of even scant care. **It amounts to indifference to present legal duty, and to utter**
3 **forgetfulness of legal obligations so far as other persons may be affected.** It is a
4 heedless and intentional conduct which is or ought to be known to have a tendency
5 to injure.”

6 Respondent stated he “chose to upload the file to SunWest...I foolishly made the
7 assumption at that point we were approved on her income and no additional documentation was
8 needed, so I never followed up on the additional information from the HR director.”²⁴ Respondent
9 had a legal duty to follow up with his client’s human resource director, Rodriguez, to approve
10 and if approved, to obtain Rodriguez’s signature on the revised letters before uploading them into
11 SunWest’s database. This forgetfulness on Respondent’s part of his legal obligation to his client
12 adversely affected her chances of being approved for a loan by SunWest.

13 In addition to gross negligence, materiality is also a question of fact, *See Gerhauser v.*
14 *N.B. & M. Ins. Co.*, 7 Nev. 174 (1871); *Smith v. N.A.A.I. Co.*, 46 Nev. 30, 205 P. 801 (1922), *cited*
15 *in Powers*, 114 Nev. at 697, 962 P.2d at 601. Respondent uploaded two letters to SunWest’s
16 database that were altered from the original dated December 28, 2018.²⁵ Even if the altered
17 information within the letters was not a misrepresentation, the fact that Respondent kept his
18 client’s human resource director, Rodriguez’s, signature on the two modified letters without
19 obtaining her approval and/or actual signature was a material misrepresentation. SunWest relied
20 upon the fact that the letters with Rodriguez’s signature verifying Respondent’s client’s income
21 were documents created and approved by Rodriguez. That fact was misrepresented by
22 Respondent. This misrepresentation was also a dishonest business practice.

23 Respondent’s acts and omissions are in violation of NRS 645B(1)(c)(1),(2), and (8).

24 **B. Violation of NRS 645B.670(1)(c)(12) and NAC 645B.505(3)(a), (d)(3), or (5)**

25 **NRS 645B.670 Authorized disciplinary or other action; grounds for**
26 **disciplinary action. [Effective through December 31, 2019.]**

- 27 1. Except as otherwise provided in [NRS 645B.690](#):

28 ²⁴ MLD’s Exhibit 5, page 0020.

²⁵ MLD’s Exhibit 5, page 0020 and MLD’s Exhibit 7, page 0023.

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NRS 645B.670(1)(c)(12) states:

Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner or has assisted or offered to assist another person to commit such a violation.

NAC 645B.505 states:

3. For the purposes of NRS 645B.670, a mortgage agent commits a violation if the mortgage agent:

- (a) Engages in a deceptive trade practice as defined in chapter 598 of NRS;
- ...
- (d) Does any of the following:
 - ...
 - (3) Makes a false statement of material fact to the Division;
 - ...
 - (5) Demonstrates a lack of financial responsibility, character and general fitness so as to lose the confidence of the community and warrant a determination that the mortgage agent will not operate honestly, fairly and efficiently for the purposes of chapter 645B of NRS.

NRS 598.0915(15) defines *deceptive trade practice* as:

A person engages in a “deceptive trade practice” if, in the course of his or her business or occupation, he or she:

- 15. Knowingly makes any other false representation in a transaction

The MLD asserts that Respondent violated NRS 645B.670(1)(c)(12) by violating NAC 645B.505(a) and/or (d)(3) or (5). For the reasons discussed in Section B, it is found that Respondent violated NRS 645B.670(1)(c)(12) by knowingly making a false representation in a loan transaction. Also, Respondent made a false statement of material fact to the Division in a renewal application when Respondent answered “No” to the question “Have you ever voluntarily resigned, been discharged, or permitted to resign after allegations were made that accused you of: (1) violating statute(s), regulation(s), rule(s), or industry standards of conduct? (2) fraud, dishonesty, theft, or the wrongful taking of property?” on Respondent’s January 2020 renewal application.²⁶ SunWest had discharged Respondent in 2019 due to implications of fraud.²⁷ This implication of fraud is connected to the false representation Respondent made in a loan transaction

²⁶ MLD’s Exhibit 8, pages 0059.
²⁷ MLD’s Exhibit 3, page 0017.

1 when Respondent uploaded and held out to SunWest that the two altered letters verifying his
2 client's income following the original December 28, 2018 letter were approved and signed by
3 Rodriguez.²⁸ Respondent knew the letters he uploaded had not been seen by Rodriguez, and
4 Respondent did not follow-up to get Rodriguez's official approval and signature before uploading
5 the letters. There is a lack of the preponderance of evidence that the Respondent lacks financial
6 responsibility, character and general fitness so as to lose the confidence of the community.
7 However, the preponderance does support, and it is found that Respondent made a false statement
8 of material fact to the Division and engaged in a deceptive trade practice by knowingly making a
9 false representation in a transaction in violation of NRS 645B.670(1)(c)(12) by violating NAC
10 645B.505(a) and (d)(3).

11 **C. Violation of NRS 645B.0147(3)(a) and (g)**

12 3. As used in this section, "fiduciary obligation" means a duty of good faith and
13 fair dealing, including, without limitation, the duty to:

14 (a) Act in the client's best interest;

15 . . .and

16 (g) Exercise reasonable care in performing any other duty relating to a mortgage
17 transaction.

18 The MLD asserts that Respondent violated NRS645B.0147(3)(a) and (g). There is a lack
19 of the preponderance of evidence to support that the Respondent did not act in the client's best
20 interest in that the evidence supports that the Respondent attempted to obtain expeditious approval
21 of his client's loan application. However, Respondent should have followed up with Rodriguez
22 to obtain her approval and signature on the modified letters to verify his client's income.²⁹ By
23 making no effort to ensure the letters were officially authenticated and sanctioned by Rodriguez,
24 and instead by uploading them in an unapproved altered form, Respondent failed to exercise
25 reasonable care in performing his duty relating to a mortgage transaction in violation of NRS
26 645B.0147(3)(g).

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28 ²⁸ MLD's Exhibit 5, page 0020 and Exhibit7, page 0023.

²⁹ MLD's Exhibit 5, page 0020-0021 and Exhibit 7, page 0023.

