

RF

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION

BEFORE THE COMMISSIONER OF  
FINANCIAL REGULATION

v.

OAH NO. LABOR-MCA-76-23-29896

CFR-FY2022-0032

MICHAEL COOPER,

RESPONDENT

### PROPOSED FINAL ORDER

The Proposed Decision ("Proposed Decision") of the Administrative Law Judge (the "ALJ"), issued on September 13, 2024, in the above captioned case, having been received, read and considered, the Maryland Commissioner of Financial Regulation (the "Commissioner") this 12th day of November 2024, hereby issues this Proposed Final Order ("Proposed Order")

### BACKGROUND AND DISCUSSION

Ameris Bank ("Bank") employed Michael Cooper ("Respondent") as a mortgage loan originator ("MLO"). An MLO originating mortgage loans in Maryland requires a license ("MLO License") issued by the Maryland Commissioner of Financial Regulation ("CFR") unless exempt from Maryland's licensing requirements. Financial Institutions Article ("FI"), §11-601 et. seq Annotated Code of Maryland governs licensing of MLOs in Maryland.

The Respondent holds an MLO License and his role as an MLO for the Bank generally included taking applications<sup>1</sup> from consumers seeking mortgage loans from the Bank.

In 2021, the Bank identified a mortgage loan it extended based on materially false financial information included in the application and commenced an investigation. The Bank's investigation identified a total of 31 mortgage loans the Bank extended between July 10, 2020, and October 21, 2021, based on applications containing materially false information generally relating to income or employment (collectively, the "31 Loans"). The Bank's investigation showed the Respondent served as the MLO on all 31 Loans and that the Respondent received the applications for all 31 Loans through a single referral source (the "Referral Source")<sup>2</sup>.

Following its investigation, the Bank terminated the Respondent's employment and filed a complaint with the CFR<sup>3</sup>. The CFR conducted an investigation, and, on September 28, 2023, the CFR issued a Statement of Charges and Order for Hearing against the Respondent ("Statement of Charges"). The CFR delegated authority to the Office of Administrative Hearings ("OAH") to issue proposed findings of fact ("FF"), proposed conclusions of law ("CL"), and a recommended order.

The OAH conducted a hearing in this matter which took place over 2 days ("OAH Hearing"). On September 13, 2024, ALJ Marc Nachman issued the Proposed Decision containing, among

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<sup>1</sup> As used herein, the term "applications" shall collectively refer to any formal loan application together with all financial, employment, banking or other information submitted in connection therewith.

<sup>2</sup> The Referral Source consisted of an individual and a business run by that individual.

<sup>3</sup> While the Bank filed the Complaint with the CFR, the CFR designated the Complaint as a consumer complaint. The Proposed Decision does not indicate whether the borrowers of any of the 31 Loans filed a complaint with the CFR.

other things, FF, CL, and a recommended order. State Government Article (“SG”), §10-220 Annotated Code of Maryland requires the Commissioner to review the Proposed Decision and issue this Proposed Order. To the extent this Proposed Order includes any changes, modifications, or amendments to the Proposed Decision, it must contain an explanation for each change, modification, or amendment.<sup>4</sup>

The Proposed Decision contains 38 FF, several unenumerated CL, and recommended an order dismissing all charges against the Respondent. The Proposed Decision contains the ALJ’s detailed summary of the evidence and testimony offered at the OAH Hearing in support of the ALJ’s FF, CL and recommended order.

As explained in the Proposed Decision, the Respondent challenges the CFR’s charges, not by disputing whether the applications for the 31 Loans contained materially false information<sup>5</sup>, that Respondent submitted these applications to the Bank or that the Respondent received the applications for all 31 Loans through the Referral Source. Rather, the Respondent challenges the charges asserted in the Statement of Charges by asserting, among other things, that the Respondent had no knowledge the applications contained false information or were otherwise suspicious, that the Respondent followed all Bank policies and procedures in submitting the applications to the Bank, and that the Respondent’s duties at the Bank did not include verifying information in the applications.

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<sup>4</sup> SG §10-220(d)(4)

<sup>5</sup> The CFR submitted evidence concerning 7 of the 31 Loans as only those loans were extended to Maryland consumers. However, the Bank investigator testified that the Bank identified inaccurate information in connection with all 31 Loans.

The ALJ recites in the Proposed Decision how testimony offered at the OAH Hearing explained that the mortgage industry employs various methods to detect materially false information in mortgage loan applications. These methods include computerized reviews, reviews by mortgage loan processors and post-closing verifications of certain information. The ALJ found that the Bank did not expect its MLOs, including the Respondent, to verify information contained in applications or to detect false information. Rather, the ALJ found the Bank's MLOs turn applications over to various back-office teams to process, underwrite and close loans. The ALJ found duties assigned to these back-office teams include verifying the accuracy of information contained in applications.

Notwithstanding the Bank following its standard practices, 30 of the 31 Loans did not initially trigger any concerns by the Bank regarding potentially false financial information. Only after the Bank detected an issue on a single loan and commenced an investigation did the Bank identify false information in the applications for the remaining 30 loans. The difficulty the Bank experienced in identifying the materially false financial information in the applications for the 31 Loans suggests that the applications did not present themselves in a way that rendered detection of the false information easy or apparent. If it had, the Bank's back-office teams should have detected the false information at a much earlier time.

The ALJ also discussed Respondent's testimony that, once a mortgage loan he originated closed, Bank policy required the Respondent to purge his file containing the application and that the Respondent had no access to applications following closing. The Bank investigator testified that his investigation included side by side comparisons of many of the applications

for the 31 Loans, which comparison allowed the investigator to identify certain suspicious patterns and similarities. Because the Respondent lost access to the applications following closing, the ALJ indicated that the Respondent lacked a similar ability.

The CFR offered no clear evidence of any conspiracy between the Referral Source and the Respondent. Among other things, the CFR offered no evidence the Respondent received any payments or compensation from the Referral Source for the ALJ's role in submitting applications for the 31 Loans to the Bank. Rather, the CFR based its case on the Respondent serving as the sole connection between the Referral Source and the Bank and the Respondent's role in presenting applications containing false information to the Bank.

The ALJ noted that, although the Bank investigator questioned certain actions and practices of the Respondent in his testimony, the investigator could not testify as to the existence of any Bank policy or procedure that Respondent allegedly violated in taking such actions or following such practices.

The ALJ had the ability to observe the demeanor of all witnesses testifying at the OAH Hearing, including the Respondent, CFR witnesses and witness offered on the Respondent's behalf. The ALJ described Respondent's testimony as "cogent, thoughtful, uncomplicated and both internally and externally consistent." The ALJ added that the Respondent "testified without hesitation or vacillation, answering all questions directly, without complicating or qualifying his answers." The ALJ also noted favorably the testimony of witnesses offered on Respondent's behalf and their knowledge of the mortgage lending industry.

Based on a careful analysis of the above evidence and testimony, the ALJ concluded the Respondent did not know that applications for the 31 Loans contained materially false information.

The Statement of Charges lists 5 Counts against the Respondent. Finding in the CFR's favor on Counts 1 through 4 would require finding that the Respondent actively participated in a conspiracy with the Referral Source to submit applications to the Bank containing false information, knew applications received from the Referral Source contained false information, had reason to suspect the applications received from the Referral Source contained false information or violated an express statutory duty with respect to these applications. The evidence and testimony offered do not support such a finding and the Commissioner will therefore not disturb the ALJ's recommendation to dismiss Counts 1 through 4 in the Statement of Charges.

That leaves Count 5. Count 5 states as follows:

*Respondent demonstrated unworthiness, bad faith, dishonesty, and other qualities that indicate that the business of the licensee has not been or will not be conducted honestly in violation of FI §11-616(a)(5).*

The ALJ did not fully address Count 5 and that the Commissioner must therefore do so in this Proposed Order. In doing so, the Commissioner notes that acceptance of the ALJ's interpretation of the testimony and evidence presented at the OAH Hearing as summarized herein effectively precludes any finding that the Respondent operated in bad faith or

dishonestly. Rather, the Commissioner will focus on whether the Respondent demonstrated “unworthiness” to hold an MLO License.

FI §11-605(a) establishes the qualifications for an MLO License. They include FI §11-605(a)(3) which states:

*The applicant has demonstrated financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently.*

Maryland requires non-exempt MLOs to obtain an MLO License and receive training, recognizing the important role MLOs perform. MLOs can represent an on ramp for consumers to home ownership by serving as the initial point of contact between the consumer and a mortgage lender. Under FI §11-605(a)(3), an MLO must demonstrate character and general fitness to command the confidence of the community. The MLO must operate honestly, efficiently and fairly. MLOs that fail to perform their role with general fitness and in an honest, fair and efficient method can cause significant harm to both consumers and lenders. These harms can include placing consumers into mortgages they cannot afford, which increases risks of default or foreclosure. A default damages the consumer’s credit and foreclosures lead to financial loss to both consumers and lenders.

As found by the ALJ, MLOs serve to receive applications on behalf of their employers. While some consumers may contact an MLO directly, other consumers get referred to an MLO by a third party such as a realtor or a home improvement contractor. The Respondent testified that

he has developed numerous referral sources throughout his career and one such referral source testified on his behalf. Obviously, if an MLO develops a referral source who is willing to falsify financial information to induce a lender to extend loans to unqualified applicants, legitimate questions are raised as to whether that MLO is truly operating with general fitness to warrant a determination that MLO will conduct business fairly and efficiently. Those cases warrant an examination of how the MLO developed and maintained the relationship with the referral source.

This case presents a legitimate question of whether the Respondent demonstrated unworthiness as the Respondent began working with a Referral Source that ended up submitting at least 31 applications to the Bank containing false information. For the reasons previously explained, the Commissioner does not question the Respondent's inability to spot the false financial information. The Commissioner does, however, question the Respondent's relationship with the Referral Source and whether the Respondent demonstrated the character and general fitness necessary to command the confidence of the community in developing, monitoring and maintaining this relationship.

Viewed in a light most favorable to the Respondent, evidence and testimony suggest the Respondent unknowingly allowed the Referral Source to use the Respondent as the Referral Source's entry point to the Bank to submit loan applications containing false information. In permitting himself to serve as the conduit between the Referral Source and the Bank, did the Respondent fail to exercise good judgment or otherwise ignore potential red flags?



The Respondent testified that he has over 25 years in the mortgage industry and has developed referral sources in the past. However, the Proposed Decision contains no discussion of what due diligence, if any, the Respondent conducts in vetting and developing referral sources in general or this Referral Source in particular. The Respondent simply testified in a matter-of-fact manner that, similar to other referral sources, someone referred the Referral Source to the Respondent. While the Respondent willingly testified on many matters, the Proposed Decision does not discuss any testimony offered by the Respondent to demonstrate the Respondent took reasonable steps to vet the Referral Source, either before accepting applications from the Referral Source or as the relationship quickly expanded. At the same time, it does not appear the CFR's case included any information concerning the Bank's expectations of its MLOs in developing referral sources and any required or recommended due diligence. The Commissioner also notes that Maryland law does not expressly require an MLO to vet a referral source.

Regardless of whether the law or bank policy expressly requires an MLO to vet a new referral source, the role the MLO plays certainly suggests that the concept of general fitness to serve as an MLO includes having some confidence that referral sources the MLO develops are reputable. This could include inquiry into potential red flags existing either at the outset of the relationship or as the relationship continues.

The Proposed Decision does not indicate if the Respondent knew the nature of the Referral Source's business. The Bank investigation identified the business operated by the Referral Source as engaged in credit repair. If the Respondent failed to learn of the nature of the Referral

Source's business, that might suggest the Respondent failed to exercise good judgment in developing a relationship with the Referral Source. Conversely, if the Respondent knew the Referral Source engaged in credit repair, that could have suggested a need for additional due diligence or in better recognition of potential red flags.

The percentage of applications resulting in closed loans could have represented a red flag regarding a referral source engaged in credit repair. Intuitively, a person engaged in credit repair will have clients with a less-than-ideal credit history. The Proposed Decision indicates that, in the timeframe in question, the MLO received slightly over 600 applications resulting in slightly less than 300 loan closings. Based on these numbers, approximately 50% of applications the Respondent received proceeded to closing. If applications supplied by the Referral Source resulted in a substantially higher percentage of closed loans, that would potentially represent a statistical anomaly that the Respondent should have questioned. This does not mean that a substantially higher approval level would constitute evidence of improper activity. Rather, it represented an area of potential inquiry.

As discussed above, the Bank closed approximately 300 loans the Respondent originated in the relevant timeframe, including the 31 Loans. This means that the Respondent's relationship with the Referral Source quickly grew to account for approximately 10% of the Respondent's closed loan volume. While the Respondent testified that the Referral Source did not constitute a "significant" portion of his business, it did account for over 10% of his closed loan volume, a number that is certainly not insignificant. The Respondent testified he received compensation based on loan volume and the Referral Source therefore materially contributed to that

compensation. As the Respondent's relationship with the Referral Source expanded, it is reasonable to expect the Respondent to understand more about the Referral Source. Indeed, and as discussed by the ALJ, the Respondent has a clear interest in making sure applications received from Referral Sources contain true information and result in good loans.

The CFR's case, and a good portion of the Proposed Decision, questions whether the Respondent exercised good judgment in receiving information from the Referral Source as opposed to obtaining that information directly from the consumers. The Respondent, and witnesses offered on the Respondent's behalf, testified that it is not atypical for an MLO to sometimes obtain documents from a referral source as opposed to obtaining them directly from consumers. These witnesses cited examples that included customers lacking computer savvy or situations in which the referral source had previously obtained the necessary documentation and could easily submit it on the consumer's behalf<sup>6</sup>. Notwithstanding this testimony, it appears that this happens only some of the time and that MLOs generally get information directly from consumers.

The Proposed Decision does not discuss whether the Respondent's practices with respect to obtaining documentation directly from the Referral Source differed, if at all, compared to the Respondent's other referral sources. Similarly, the Proposed Decision does not discuss whether the types of circumstances noted by Respondent and other witnesses in which an MLO might obtain documents from someone other than the consumer were present in applications

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<sup>6</sup> The Bank's investigator criticized the Respondent's practice of obtaining documentation directly from the Referral Source but could not identify any Bank rule or policy that prohibited the Respondent from doing so.

submitted by the Referral Source. The Proposed Decision also does not indicate if, with respect to the Referral Source, the Respondent always obtained documents from the Referral Source/never obtained documents from consumers. The Proposed Decision does, however, paint a picture of an extremely active communication chain between the Referral Source and the Respondent. In an approximate 10 1/2-month timeframe, the Referral Source exchanged over 750 emails with Respondent.<sup>7</sup> If the Respondent exclusively or almost exclusively relied on the Referral Source for required documentation but generally did not do so with respect to other referral sources, that arguably represented a red flag the Respondent should have questioned.

The Commissioner believes it is not unreasonable to expect MLOs to exercise reasonable care and diligence in developing referral sources as that would be consistent with the qualifications for an MLO License. This reasonable care does not mean conducting an in-depth investigation, it simply means having an understanding of the role the referral source plays in developing applications (real estate broker, home improvement contractor, etc.) and actively looking for, and looking into, any red flags presented. Blindly accepting multiple referrals from a source that an MLO knows nothing about creates legitimate questions of whether the MLO has the general fitness needed to command public confidence and to operate honestly, fairly, and efficiently. Similarly, failing to recognize potential red flags in connection with a referral source may also demonstrate a lack of general fitness to serve as an MLO. This case presented questions of whether the Respondent failed to exercise sufficient care in developing and

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<sup>7</sup> Some of these messages may have been originated by, or sent to, other Bank employees but copied the Respondent

maintaining a relationship with the Referral Source, including whether the Respondent recognized and appropriately addressed any red flags observed.

The Commissioner has carefully considered the evidence and testimony offered in this matter and concludes that the evidence and testimony is not sufficient to demonstrate the Respondent's unworthiness for an MLO License. In reaching this conclusion, the Commissioner puts weight on two additional facts. First, the Bank had a process to detect false information but failed to detect any potential issues in 30 out of the 31 Loans. If the Referral Source actively intended to submit false information, it did so in a subtle way and any vetting or due diligence performed by the Respondent could have similarly failed to detect any cause for concern. Second, the ALJ had the opportunity to observe the candor and demeanor of the Respondent when testifying at the OAH Hearing. The ALJ noted his favorable impression of the Respondent and belief the Respondent testified openly and honestly. For these reasons, the Commissioner will not reject the ALJ's recommendation to also dismiss Count 5 of the Statement of Charges, although, as discussed below, the Commissioner will make a minor modification to the ALJ's proposed CL.

WHEREFORE, THE PREMISES CONSIDERED, IT IS HEREBY ORDERED BY THE COMMISSIONER:

A. That the FF listed on pages 5-9 of the Proposed Decision and enumerated as 1 through 18 and 20 through 38 be, and hereby are, ADOPTED.

B. That the FF enumerated as FF 19 listed on Page 7 be, and hereby is REJECTED

C. That pursuant to State Government Article, §10-220(d) Annotated Code of Maryland, the Commissioner finds that the evidence presented does not support the ALJ's proposed FF 19 which finds that the Referral Source did not constitute "a significant percentage of referrals received by the Respondent."

The ALJ in FF 20 found that the Respondent took applications for approximately 600 loans in the time frame in question. However, the ALJ included no FF establishing the total number of applications Respondent received from the Referral Source in that same time frame. In FF 13, the ALJ found that Respondent received applications for the 31 Loans containing purportedly fraudulent information but does not indicate whether those 31 applications represent the total universe of all applications Respondent received from the Referral Source in that time frame. The ALJ also makes no additional FF needed to form a reasonable basis for determining the significance or insignificance of the applications Respondent received from the Referral Source. For example, if the Respondent worked with numerous referral sources and averaged approximately 10 referrals a year from most of these sources, receiving 30 from a single source could be deemed significant. Without providing a clear statement of the number of applications received from the Referral Source and any information to put such number into a context, no basis exists for determining the significance or insignificance of the number of referrals received from the Referral Source.

D. That the CL listed on Page 31 of the Proposed Decision are hereby ADOPTED except for the CL stating:

*"The was no evidence that the Respondent acted in any way but professionally or acted with unworthiness, bad faith, dishonesty, or any other qualities that indicate that the Respondent's*

*business dealings have been or will be conducted dishonestly in violation of Fin. Inst. §11-615(a)(5).”*

E. That the CL listed on Page 31 and quoted above be, and the same hereby is, MODIFIED, to read as follows:

*“The CFR failed to prove that the Respondent acted with unworthiness, bad faith, dishonesty, or any other qualities that indicate that the Respondent’s business dealings have been or will be conducted dishonestly in violation of Fin. Inst. §11-615(a)(5).”*

F. That pursuant to State Government Article, §10-220(d) Annotated Code of Maryland, the Commissioner finds that the evidence presented does not support the ALJ’s CL as written. Initially, the ALJ stated there is no evidence the Respondent acted in any way but professionally. FI §11-615(a)(5) does not make acting unprofessionally a violation of that section and this language therefore is unnecessary to the CL. With respect to both this language and the remainder of the CL, the ALJ worded the CL to state there was “no evidence” presented on, among other things, the question of unworthiness. As discussed herein, the evidence and testimony in this case presents legitimate questions concerning the Respondent’s relationship with the Referral Source and whether the way the Respondent developed and maintained that relationship demonstrated unworthiness for an MLO License. The CL as written is not supportable because the CFR presented evidence of potential unworthiness, it just did not present sufficient evidence to prove unworthiness. For this reason, the CL has been reworded to clarify that the CFR failed to prove unworthiness.

G. That the charges brought against the Respondent in the Statement of Charges be and the same are hereby DISMISSED

H. The records and publications of the Commissioner reflect the Proposed Final Order.

Pursuant to COMAR 09.01.03.09, all parties have the right to file exceptions to the Proposed Final Order and present arguments to the Commissioner. The parties have twenty (20) days from the postmark date of this Proposed Final Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner and subject to judicial review pursuant to State Government Article, §10-222 Annotated Code of Maryland.

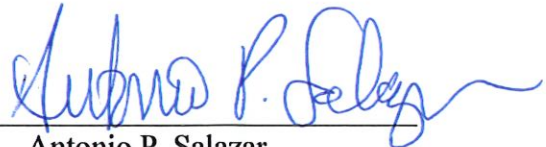
The parties may have the right to file a petition for judicial review; however, the filing of a petition for judicial review does not automatically stay the enforcement of this order.

Date:

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION

November 12, 2024

By:



Antonio P. Salazar,  
Commissioner of Financial  
Regulation