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**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO**

In re Mortgage Loan Originator
License Renewal Application of:

RAFAEL AVILA,
NMLS ID No. 2282919,

Applicant.

Docket No. 2022-16-30

**ORDER DENYING MORTGAGE LOAN
ORIGINATOR LICENSE APPLICATION AND
NOTICE OF THE OPPORTUNITY TO
REQUEST A HEARING**

The Director of the State of Idaho, Department of Finance (Director), pursuant to the Idaho Residential Mortgage Practices Act, Idaho Code § 26-31-101 et seq. (the Act), and in particular §§ 26-31-306(1)(d) and (h) and 26-31-313(1)(a) and (b) of the Act, hereby issues the following Findings of Fact, Conclusions of Law, and Order Denying Mortgage Loan Originator License Application, and Notice of the Opportunity for a Hearing (Order).

FINDINGS OF FACT

1. The Applicant, Rafael Avila, a resident of the state of Texas, applied for an Idaho Mortgage Loan Originator (MLO) license by filing an individual Form MU4 through the online

Nationwide Mortgage Licensing System and Registry (NMLSR), a.k.a. Nationwide Multistate Licensing System (NMLS) under NMLS number 2282919. This application was attested to by the Applicant on December 28, 2021, and submitted on the same date by Angela Michelle Walden of Amerisave Mortgage Corporation.

2. The application Form MU4 seeks information about an individual applicant's qualifications to be licensed as a mortgage loan originator. A section of the application is entitled "Disclosure Questions" and consists of a series of questions that inquire into an applicant's history regarding financial, criminal, civil, judicial, and regulatory matters.

3. Pertinent to the Applicant's qualifications is question "(D) Do you have any unsatisfied judgments or liens against you?" The applicant responded, "no" to this question.

4. Consistent with normal practice, a Department examiner conducted an assessment of the Applicant using various sources of public information to determine if the Applicant demonstrates sufficient financial responsibility, character, and general fitness in order to be licensed as a mortgage loan originator.¹

5. The examiner obtained a public record background information report through LexisNexis that reflected the Applicant has several unsatisfied judgments against him. The examiner obtained verification of these judgments as a result of the LexisNexis report review and additional research as follows:

¹ Conducted pursuant to Part 3 of the Act titled "The Idaho Secure and Fair Enforcement for Mortgage Licensing Act" (Idaho S.A.F.E. Mortgage Licensing Act), Idaho Code § 26-31-306.

- a. Small Claims Default Judgment for Plaintiff rendered on November 9, 2020, in the Small Claims Court for Precinct 2, Collin County, Texas, Case No. 02-SC-20-00016, in the amount of \$4,387.00, in favor of Monroe Ventures, Inc.
- b. Eviction Judgment rendered on November 12, 2019, in Precinct 3-1, Collin County, Texas, Case No. 31-EV-19-03118, in the amount of \$2,700.00, in favor of W & T Management.
- c. Eviction Default Judgment rendered on September 25, 2019, in the Justice Court for Precinct 2, Collin County, Texas, Case No. 02-EV-19-00310, in the amount of \$4,485.00, in favor of Iftekhar Yusuf.
- d. Forcible Entry and Detainer Judgment rendered on May 21, 2018, in the Justice Court for Precinct 2, Collin County, Texas, Case No. 02-EV-18-00156, in the amount of \$2,455.00 for back rent, plus additional amounts, in favor of Iftekhar Yusuf.

6. The Department has no evidence indicating that the judgments described above have been satisfied and/or released.

7. The Applicant's negative response to the Form MU4 application disclosure question (D) is a material misrepresentation, and the failure to provide the details of the judgments described above that were still outstanding as of the date of the application constitutes a material omission.

8. On April 27, 2022, the Department provided the Applicant notice of an intent to deny the application within approximately one month based on the information set forth above unless the Applicant was able to provide documentation to satisfy the Department that the noted item had been resolved and that disclosure was not required. The notice alternatively provided the

Applicant the opportunity to withdraw the application. The Applicant failed to provide the requisite documentation or withdraw the application by the stated deadline.

FINDINGS AND CONCLUSIONS OF LAW

9. The allegations set forth in paragraphs 1 through 8 above are fully incorporated herein by this reference.

10. Idaho Code § 26-31-304 provides that an individual shall not engage in the business of a mortgage loan originator without first obtaining, and maintaining annually, a license.

11. Idaho Code § 26-31-305(1) provides that an applicant for a mortgage loan originator license must apply through the NMLSR in a form required by the Director of the Idaho Department of Finance (Director).

12. Idaho Code § 26-31-306(1)(d) provides that the Director shall not issue a mortgage loan originator license under the Act unless the Director makes a finding that an 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 within the purposes of the Act.

13. Pursuant to Idaho Code § 26-31-306(1)(h), before an application for license can be approved, an applicant must provide all information on the application as required per Idaho Code § 26-31-305. Idaho Code § 26-31-305(10) further provides that an applicant shall make complete disclosure of all information as set forth in the application.

14. Pursuant to Idaho Code § 26-31-313(1)(a) and (b), the Director may deny a license if an applicant violates the Act and/or withholds information or makes a material misstatement in an application for a license.

15. The Applicant made a material misstatement of fact in his application, which is grounds to deny his application for licensure. He answered a question inaccurately and failed to disclose the judgments. The false answer to disclosure question (D) and failure to disclose the judgments prohibits the Director from issuing a license to the Applicant pursuant to Idaho Code § 26-31-306(1)(d) and (h) and § 26-31-313(1)(a) and (b).

16. The Director finds it appropriate to deny the application because the Applicant's failure to provide complete information on the Form MU4 regarding the judgments demonstrates that the Applicant lacks the appropriate character and 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 within the purposes of the Act. Because the Director cannot make the requisite findings under Idaho Code § 26-31-306(1)(d), it is appropriate to deny the Applicant's request for an Idaho mortgage loan originator license, pursuant to Idaho Code § 26-31-313(1).

ORDER

NOW, THEREFORE, BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND PURSUANT TO IDAHO CODE §§ 26-31-313(1)(a) and (b), IT IS HEREBY ORDERED THAT THE APPLICATION FOR A MORTGAGE LOAN ORIGINATOR LICENSE APPLICATION ATTESTED TO BY RAFAEL AVILA, NMLS #2282919, ON DECEMBER 28, 2021, AND SUBMITTED BY ANGELA MICHELLE WALDEN OF AMERISAVE MORTGAGE CORPORATION ON THE SAME DATE IS DENIED.

NOTICE OF THE OPPORTUNITY TO REQUEST A HEARING

17. The Applicant is HEREBY NOTIFIED that the foregoing ORDER DENYING MORTGAGE LOAN ORIGINATOR LICENSE APPLICATION is a final order of the Director denying the license application, subject to the Applicant's right to timely file a request for a hearing on the question of his qualifications for a mortgage loan originator license under the Act, pursuant to Idaho Code § 26-31-305(6)(a). Such request for a hearing must be in writing and submitted to the Department within fifteen (15) days after the service of this Order. A copy of the request for hearing shall be served on the following:

Attn: Lisa Baker
Assistant to the Director
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031

A copy of the request for contested case and hearing shall also be served on the Department's counsel in this matter:

Erick M. Shaner
Deputy Attorney General
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031

Alternatively, the Applicant may email the request for hearing to: CFLegal@finance.idaho.gov.

18. If the Applicant timely requests a hearing, the Director of the Department, or a Hearing Officer acting on the Director's behalf, will notify the Applicant of further steps including the date, time, and place of the hearing.

19. Any hearing and subsequent proceedings in this matter will be conducted in accordance with the Idaho Administrative Procedure Act, Idaho Code § 67-5201 *et seq.* and the Idaho Rules of Administrative Procedure (IDAPA 04.11.01).

20. Pursuant to Idaho Code § 26-31-305(6), if a hearing is held, the Applicant shall reimburse, pro rata, the Director for her reasonable and necessary expenses incurred as a result of the hearing.

IT IS SO ORDERED.

DATED this 29th day of June 2022.



STATE OF IDAHO
DEPARTMENT OF FINANCE

A handwritten signature in cursive script, appearing to read "Patricia R. Perkins", written over a horizontal line.

PATRICIA R. PERKINS, Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June 2022, I caused a true and correct fully-executed copy of the foregoing ORDER DENYING MORTGAGE LOAN ORIGINATOR LICENSE APPLICATION AND NOTICE OF THE OPPORTUNITY FOR A HEARING to be served on the following by the designated means:

Rafael Avila
337 Regal Drive
Allen, TX 75002

- U.S. mail, postage prepaid
- certified mail
- facsimile _____
- email: ravila704@gmail.com
ravila@amerisave.com

Paralegal