

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain
Order Against:

FINANCIAL SERVICES ENTERPRISES,
dba PIONEER CAPITAL,

Respondent.

Case No. 20903

OAH No. 2016040551

DECISION

Administrative Law Judge Angela Villegas (ALJ), State of California, Office of Administrative Hearings (OAH), heard this matter May 3 and 4, 2016, in Los Angeles, California.

Charles Carriere, Counsel for the Department of Business Oversight (Department), and Judy Hartley, Senior Counsel for the Department, represented complainant Jan Lynn Owen, Commissioner of Business Oversight (complainant or Commissioner).

Alan Abergel, attorney at law, represented respondent Financial Services Enterprises, dba Pioneer Capital (respondent or Pioneer), whose Chief Executive Officer and sole shareholder, Quinton Berry, also appeared.

Evidence was received. The record was left open for the parties to file closing argument briefs, as follows: Complainant's brief due May 18, 2016; respondent's brief due May 25, 2016; and complainant's optional rebuttal brief due May 27, 2016. Complainant's closing brief was filed May 18, 2016, and marked for identification as exhibit KKK. Respondent's closing brief was filed May 25, 2016 and marked for identification as exhibit 16. Complainant's reply (i.e., rebuttal) brief was filed May 27, 2016 and marked for identification as exhibit LLL.

The matter was submitted for decision May 27, 2016.

The Proposed Decision was issued by the ALJ on June 7, 2016. On August 30, 2016, all parties were served with an Order of Rejection of Proposed Decision in accordance with Government Code Section 11517, subdivision (c)(2)(E). The Proposed Decision was rejected on the following basis:

Whether Sections 22004 and 22009 of the Financial Code, and Section 1422 of title 10 of the California Code of Regulations require a broker to be licensed under the California Finance Lenders Law to engage in the business of brokering loans to finance lenders regardless of whether the finance lenders have obtained a license from the Commissioner of Business Oversight.

The parties were notified that the case would be decided by the Commissioner upon the record, and upon any written argument offered by the parties. The written arguments were due by September 29, 2016.

Complainant and respondent submitted timely arguments. The Commissioner considered the arguments that were relevant to the reason for rejecting the Proposed Decision.

RESPONDENT'S MOTION TO DISMISS

1. On April 18, 2016, respondent filed a motion to dismiss the present proceeding. On April 27, 2016, complainant filed an opposition to the motion. On April 28, 2016, respondent filed a reply to the opposition.

2. The parties did not request oral argument, and neither the ALJ nor a presiding judge ordered oral argument. (Cal. Code Regs., tit. 1, § 1022, subd. (f).) Nevertheless, the ALJ offered both parties a chance to present oral argument at the hearing on May 3, 2016. The parties made arguments, which the ALJ considered.

3. The Motion was denied for the reasons set forth on the record of the hearing.

ISSUE; SUMMARY OF DECISION

1. The issue in this case is: Did respondent engage in the unlicensed business of a finance lender and/or broker, within the meaning of the California Finance Lenders Law, Financial Code sections 22000 et seq. (CFLL), such that respondent may appropriately be ordered to Desist and Refrain from that unlicensed activity?¹

2. This decision concludes respondent engaged in the business of a finance lender within the meaning of the CFLL. Since respondent engaged in activity requiring licensure, it is proper to order respondent to desist and refrain from its unlicensed activity.

¹ At the conclusion of the administrative hearing, complainant withdrew the Desist and Refrain Order's allegations that respondent made or published statements that were "false, misleading, or deceptive, and omitted material information necessary to make the statements not false, misleading, or deceptive[.]" in violation of Financial Code section 22161, subdivisions (a) and (b). (Ex. D.) Accordingly, this case does not present the issue whether respondent engaged in that alleged conduct, or whether respondent may be ordered to desist and refrain from it.

FACTUAL FINDINGS

1. On March 10, 2016, complainant in her official capacity, through Mary Ann Smith, Deputy Commissioner, Enforcement Division, issued a Desist and Refrain Order (Order) against respondent.² On April 6, 2016, respondent requested a hearing. The present proceeding followed.

2. Respondent is not licensed by the Commissioner as a finance lender or broker, though respondent has twice applied for licensure. (Exs. 6-10; testimony of Quinton Berry.) Indeed, respondent believes the Department mishandled its initial application, and argued that this mishandling cast doubt on the reliability of the Department's legal and factual contentions generally and in this case in particular.³ As of the administrative hearing, respondent's second application was still pending.

3. Respondent's business is to arrange commercial loans and other financing for companies of various sizes.⁴ In so doing, respondent solicits clients in need of financing, evaluates clients' needs and ability to repay, proposes loan terms-including security and lien priority-conducts due diligence and other underwriting activities, collects fees from clients, and makes or participates in the decision whether to lend. (Exs. 0, AA-II, KK-TT, VV, WW, YY, CCC, EEE, and GGG; testimony of Quinton Berry, Robert Stefanovich, Skyler Ditchfield, and David Scott Kimball.)

4. (a) The evidence did not show that respondent actually funds loans itself, and did not include documentation of any loans actually consummated. Respondent presented evidence, primarily the testimony of Mr. Berry, that respondent has developed a network of outside funding sources, to which it turns in an effort to provide the financing sought by the client, and that, if any loans were consummated, the money would actually come from those outside sources.

(b) Respondent's outside funding sources include at least one bank and some companies furnishing what Mr. Berry described as venture capital. The evidence did not include a comprehensive inventory of every funding source respondent uses, and did not disclose particulars about the business activities of any funding source. The evidence did indicate at least some of them are engaged in the business of making loans such as the ones respondent sought to arrange, but did not indicate that any of them is licensed under the CFLL as a finance lender.

5. Even though respondent uses outside funding sources, respondent's communications consistently hold it out as a lender, and employ other language indicating respondent can and does decide whether to loan money, and actually loans

² Another Desist and Refrain Order had been issued against respondent on February 8, 2016 (ex. A) and subsequently "withdrawn" (ex. C); it is not the subject of the present proceeding.

³ Respondent also contended the Department's contentions should not be credited because the Department, in respondent's view, improperly posted the Order on its website.

⁴ Sometimes, the financing respondent proposes is in a form other than a loan: e.g., a factoring arrangement. Nevertheless, many of respondent's financing arrangements are loans.

money, to its clients. (E.g., exs. 0 (ex. 1 thereto), AA-II, KK-TT, VV, WW, YY, CCC, EEE, and GGG; testimony of Robert Stefanovich, Skyler Ditchfield, and David Scott Kimball.)

6. For example, respondent's advertising/marketing materials describe it as "a global leader in asset based equipment lending, venture leasing, working capital facilities, structured finance solutions, and small to mid-ticket leasing solutions." (Ex. GGG.) Its "Product Offerings ... include Lease and Loan Financing, Sale Leasebacks, Refinancing of Existing Equipment on a Lease or Loan basis, Growth Capital structured as Term Debt, Mezzanine Debt, Merger/Acquisition Financing, and DIP (Debtor-in-Possession) Financing." (Ex. RR.)

7. Likewise, in negotiating with some clients, respondent's representatives, including Mr. Berry, claimed respondent would be the client's lender and fund the loan itself. (Testimony of Robert Stefanovich, Skyler Ditchfield, and David Scott Kimball.) In addition, respondent issued "term sheets" setting out proposed terms and conditions of the contemplated financing, identifying respondent as both "Lender" and "Creditor," indicating respondent had a "credit committee," advising that respondent would take a security interest in the client's assets, and often including language purporting to subordinate the client's other debts to "this note." (E.g., exs. AA-II, LL, NN, CCC, and EEE.)⁵

8. The evidence included 18 term sheets, 10 dating from 2014 and eight from 2015, with financing amounts ranging from \$75,000 (ex. PP) to \$15 million (ex. EE). The evidence did not establish which proposed funding source(s) respondent used, or tried to use, for each of the loans proposed by the term sheets, though Mr. Berry believably testified he planned to use a bank for one such loan, and worked with "venture capital" firms for six of the others.

9. Even as respondent's communications describe it as a lender, they also equivocate about what respondent does. (Testimony of Quinton Berry; ex. 2.) Some of respondent's client correspondence discusses respondent's work with outside funding sources on the client's behalf. (*Id.*) Respondent's term sheets maintain they do not constitute a commitment to lend, and refer to the possibility that the eventual loan will be "syndicated." (E.g., exs. 0, AA-II, KK-TT, VV, WW, YY, CCC, EEE, GGG, and 2.) In addition, the term sheets and respondent's advertising/marketing materials mention respondent's having an investor group, affiliates, assigns, and the like (*id.*), and on occasion, respondent actually brings a funding source into direct contact with a client. (Testimony of Quinton Berry; ex. 2.)

10. Respondent contended its clients are sophisticated borrowers who would not be misled by any mistaken references to respondent as a lender or other language suggesting respondent itself would be funding the proposed loan. This contention had a

⁵ In addition to respondent's advertising/marketing materials, oral representations, term sheets, and correspondence, complainant's evidence also included complaints and a cross-complaint from civil cases (exs. O-U), alleging respondent was a lender. Complaints against respondent (exs. P, S, T, and U) have negligible evidentiary value, since they simply comprise another party's allegations. Respondent's own complaints describing it as a lender, however, constitute additional admissions by respondent.

modicum of credibility; some of respondent's customers appeared to have financial sophistication. The evidence did not, however, disclose the sophistication level of others. Moreover, respondent's contention that its clients should be deemed sophisticated because the client contacts were highly-placed executives within their organizations was unconvincing. A person need not possess financial sophistication to be an executive.⁶

11. Respondent also attempted to disavow writings not actually authored by Mr. Berry, such as the term sheet template and respondent's civil-case complaints, on grounds that respondent retained other professionals, such as corporate and litigation counsel, to draft those materials. Respondent contended the other professionals may have been wrong in characterizing respondent as a lender or in crafting language suggesting that respondent itself funded or approved loans. Respondent's contention was neither persuasive nor credible, because respondent undisputedly issued the communications authored by others on its behalf.

12. In sum, the evidence showed respondent engages in the activities of a commercial lender-short of actually putting up the money-and also in brokering activities.

13. With regard to brokering, the Department's communications to respondent (in correspondence) and to the public (in the Department's Instructions for Completing the Application for a License under the CFLL) indicate that "[a] broker licensed under the [CFLL] can only refer loans to a finance lender who holds a license with the Department." (Exs. 6, 7, and 10.)

LEGAL CONCLUSIONS

Introduction

1. Those who engage in the business of a finance lender or broker must obtain a license from the Commissioner. (Fin. Code, § 22100, subd. (a).)⁷ Under section 22712, subdivision (a), the commissioner may issue a desist and refrain order against any person "engaged in the business as a broker or finance lender ... without a license[.]"

2. Once a desist and refrain order is served, the affected person has 30 days to request a hearing, and a hearing must then be held within 30 days thereafter, or "the order is rescinded." (§ 22712, subd. (a).) The hearing on the March 10, 2016 Order was timely. (Factual Finding 1.)

3. In a hearing to contest a desist and refrain order, the Commissioner bears the burden of demonstrating grounds to uphold the order. In this case, in which no rights or privileges of licensure are at issue, the applicable standard of proof is preponderance of the evidence. (Evid. Code, §§ 115; 500. See *Imports Performance v.*

⁶ Besides, client sophistication is irrelevant to whether respondent engages in the business of a finance lender; its relevance was to whether respondent's statements and/or publications were misleading, which is not an issue in this case. (See Legal Conclusion 20.)

⁷ Further statutory references are to the Financial Code, unless otherwise indicated.

Dept. of Consumer Affairs, Bur. of Automotive Repair (2011) 201 Cal.App.4th 911, 916 [in proceeding to revoke a professional license, a heightened standard of proof applies; in other cases, the preponderance standard applies].]⁸ Respondent's argument at the hearing and in its closing brief that a higher standard of proof should apply in this case is thus rejected.

4. Complainant met the burden to the extent it showed respondent acted as a finance lender, and the Order against respondent's continuing to engage in its unlicensed activities as a finance lender should be upheld. (Factual Findings 2-13.)

Respondent Engaged in the Business of a Finance Lender

5. Under section 22009, a "finance lender" includes, in relevant part, any person who is engaged in the business of ... making commercial loans. The business of making ... commercial loans *may include* lending money and taking ... security for a loan[.] (Emphasis supplied.)

6. Section 22001, subdivision (a), mandates that the CFLL "be liberally construed and applied to promote its underlying purposes and policies," which include ensuring an adequate supply of credit; fostering competition among finance lenders; protecting borrowers against unfair practices while recognizing the interests of legitimate and scrupulous lenders; encouraging the development of fair and economically sound lending practices; and promoting a sound economy in the state.

7. Respondent contended section 22009 must be read to mean that a person is not engaged in the business of a finance lender unless the person actually lends money and takes security. Respondent reasoned that Financial Code section 22009's use of the phrase "may include" to describe the activities of a finance lender must be interpreted to mean "may *only* include" those activities, and if either is missing from the person's activities, then the person is not a finance lender.

8. Respondent's contention was not persuasive. Whether read literally or with the liberal construction mandated by section 22001, the phrase "may include" indicates lending money and taking security are *indicia* of finance lending, but not rigid requirements.

9. This interpretation finds support in section 15, stating, "'Shall' is mandatory and 'may' is permissive."⁹

10. (a) Further support appears in section 22502, which defines a "commercial loan" under the CFLL as one with a principal amount of \$5,000 or more, or

⁸ Once the initial burden has been met and an exemption is claimed, under section 22053, "the burden of proving an exemption is upon the person claiming it."

⁹ Respondent's contention that this definition applies only to statutes mandating or allowing a person to act was unduly cramped and therefore unpersuasive.

any loan under an open-ended credit program, the proceeds of which are intended for other than personal, family, or household purposes. The loan may be either secured or unsecured. (*Id*)

(b) Since a commercial loan subject to the CFLL need not be secured, then a person need not "take security" in order to meet the definition of a finance lender under the CFLL. And if taking security is not a requirement, then by extension, neither is "lending money": that is, funding loans with the finance lender's own resources.

11. (a) In sum, the activities listed in section 22009 are merely examples of what a finance lender does, but are not mandatory criteria or an exclusive or exhaustive list. "May include" does not mean "may *only* include." Whether a person lends money and takes security are merely factors in determining whether that person is "engaged in the business of ... making commercial loans." (§ 22009.)

(b) Additional factors would include other activities associated with lending, such as holding oneself out as a lender, gathering and analyzing the kinds of information lenders use in determining whether to loan money, evaluating risk, proposing loan terms and conditions, and participating in the decision whether to extend credit.

12. Respondent contended that if the Legislature had intended to create a broad definition of "finance lender," to encompass activities such as respondent's-that is, activities short of actually making loans and taking security-it could have listed those other activities in section 22009, just as such activities are listed in statutes governing other businesses: e.g., those regulated by the Bureau of Real Estate. (See, e.g., exs. N [citing Bus. & Prof. Code, § 10130] and 16.) This contention was unpersuasive in light of the plain wording of section 22009, as explained above, and the liberal construction mandated by section 22001. Accordingly, the Legislature *did* create a broad definition of "finance lender."

13. Respondent manifestly engaged in the business of making commercial loans within the meaning of section 22009. (Factual Findings 2-12.)

14. Each of the loan financing arrangements contemplated in respondent's term sheets met the definition of a commercial loan under section 22502. In addition, respondent consistently held itself out as a lender and regularly conducted many activities of a lender, including performing "due diligence" (i.e., collecting and evaluating information relevant to the decision to lend money and the terms on which to lend it), assessing the risk of lending to a particular client, proposing loan terms and conditions-which included providing for itself to take a security interest in clients' assets and for the subordination of clients' other debt - and sharing in or making the ultimate decision whether to lend. (Factual Findings 2-12.)

15. Although the evidence did not establish respondent actually funded loans, and included communications in which respondent indicated it would not itself provide

the proposed funding (Factual Findings 2-12), funding loans is not dispositive of whether a person is engaged in the business of making commercial loans. (See Legal Conclusions 5-12.) Respondent's other activities bring it within the definition of a finance lender.

16. Respondent's remaining arguments that it was not engaged in the business of making commercial loans were not persuasive, tending to overcomplicate, even obfuscate, the relatively straightforward facts and law of this case.

17. For example, respondent invoked sections 22013, subdivision (b)(1), and 22014, subdivisions (a) and (b), governing mortgage loan originators (MLOs), to argue it was not required to be licensed merely for "underwriting." (Exs. N and 16.)

18. The short answer to respondent's contention is that MLO statutes do not apply. Respondent is not alleged to have acted as an MLO but as a finance lender-and respondent did act in the latter capacity. (Factual Findings 1-12; see Legal Conclusions 4-15.) According to respondent, however, "It follows that if underwriting of residential mortgage loans for consumer purposes does not require a MLO license, that a commercial loan underwriter does not need a CFL license." (Ex. N.)

19. (a) The cited statutes do not exempt underwriting from licensure even under the MLO scheme.

(b) Section 22013, subdivision (b)(1), provides that a person who merely marshals information necessary to the underwriting process is not an MLO. But the person's activities must "not include offering or negotiating loan rates or terms[.]" things in which respondent regularly engaged. (Factual Findings 2-12.)

(c) Section 22014, subdivisions (a) and (b), concern "[a] loan processor or underwriter who does not represent to the public, through advertising or other means ... that the individual can or will perform any of the activities of [an MLO.]" Even if respondent's analogy between a finance lender and an MLO held up, respondent repeatedly represented itself to be a lender; thus, the cited exemption would not apply. (Factual Findings 2-12.)

(d) Indeed, section 22014, subdivision (c), mandates licensure for "independent contractor[s]" who "engage in the activities of a loan processor or underwriter for a residential mortgage loan[.]" To the extent respondent argues it was acting as an independent underwriter or loan processor, under its own analogy, it would still have had to be licensed. In sum, the MLO statutes do not apply, and even if they did, they would still require licensure for respondent.¹⁰

¹⁰ Likewise, the reference in respondent's closing brief to the Commercial Code's definition of "maker" for purposes of the law governing negotiable instruments (ex. 16) had no persuasive impact on the interpretation of section 22009 or the definition of a "finance lender."

20. Respondent pointed to its clients' financial sophistication (Factual Finding 10), but clients' sophistication does not alter the conclusion that respondent engaged in the business of making commercial loans: that is to say, engaged in the business of a finance lender.

21. Respondent further contended it is exempt from licensure, and from the CFLL' s application, under section 22050, subdivision (e), which provides,

This division does not apply to any person who makes five or fewer loans in a 12-month period, these loans are commercial loans as defined in Section 22502, and the loans are incidental to the business of the person relying upon the exemption.

22. This contention was likewise unpersuasive. To the extent "making loans" means "funding loans," the cited section does not apply to respondent, since respondent was not shown to have actually funded any loans. (Factual Findings 2-12.) If "making loans" were construed to include the type of lending activities in which respondent did engage, then the cited section would not exempt respondent, because respondent made many more than five loans in a 12-month period. (*Id.*) And those activities were not merely "incidental" to respondent's business; they *were* respondent's business. (*Id.*) Accordingly, respondent cannot rely on an exemption for a person conducting another kind of business who extends a few occasional commercial loans as a secondary activity.

23. Moreover, the fact that some of respondent's activities also fall within the ambit of brokering does not extract respondent from the definition of a "finance lender." A person whose activities satisfy the definition of a "finance lender" under section 22009 is a finance lender, regardless of whether some or all of that person's activities would also qualify as brokering. This is respondent's situation.¹¹

24. Finally, respondent's contention that all of the Department's arguments should be discounted because of the Department's mishandling of respondent's initial application for licensure and allegedly-improper posting of the Order on the Department's website is rejected. (Factual Finding 2.) Even if the Department were wrong in both of those matters, it was not wrong in issuing the Order, for the reasons set forth above.

25. Since respondent engaged in the business of a finance lender, and was not exempt from licensure, respondent was required to have a license. (§ 22100, subd. (a).) Respondent did not have a license. (Factual Finding 2.) Consequently, it was proper for

¹¹ Respondent's opening and closing briefs were replete with arguments about the activities lenders typically engage in, as compared to typical activities of brokers. Little evidence, and no controlling authority, was presented to substantiate these contentions. Even accepting that many of respondent's activities constituted brokering, such activities are not mutually exclusive from lending. To suggest that a person can act *either* as a lender *or* as a broker, but cannot act simultaneously as both, is a logical, factual, and legal fallacy.

the Commissioner to issue the Order against respondent's continuing to engage in those unlicensed activities. (Factual Findings 1-12.) (§ 22712, subd. (a).)

Respondent Was Not Shown to Have Engaged in the Business of a Broker Within the Meaning of the CPLL, But the Order Still Stands

26. Section 22004 defines "broker" to "include[] any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender."

27. Respondent contended this statute means a broker need be licensed only if the broker deals in loans made by *licensed* finance lenders. Conversely, complainant argued a broker must be licensed if the broker deals in loans made by anyone fitting the statutory definition of a finance lender, whether licensed or not, unless the lender is exempt from the CPLL.

28. The plain language of section 22004 supports complainant's position. Section 22004 does not confine its application to the activities of brokers working with licensed finance lenders. "Finance lender" and "licensee" have specific meanings under the CPLL. Section 22009 defines a "finance lender", in relevant part, as a person engaged in the business of making consumer loans or commercial loans. Section 22007 defines a "licensee" as "any finance lender or broker who receives a license in accordance with [the CPLL]." Had the Legislature intended to define a broker as one who only works with licensed finance lenders, the Legislature would have used "licensee" instead of "finance lender" in Section 22004, but it did not. Section 22004 clearly defines a broker as a person who brokers loans to *finance lenders*.

29. In short, Section 22004 defines "broker" broadly. That broad definition, in conjunction with Section 22100(a), subjects a broad range of "brokering" to CPLL licensure – even brokering with unlawfully unlicensed finance lenders.

30. Respondent urges a different reading of the law. According to Respondent, brokering with an unlawfully unlicensed finance lender is not an activity subject to CPLL licensure. Consequently, when an unlicensed person engages in such brokering, the Department would have no case against him for a violation of the CPLL. In support of that argument, Respondent cites Financial Code section 22059 and section 1422 of Title 10 of the California Code of Regulations. Upon review, neither law is availing to Respondent.

31. Section 22059 states that "[a] license to act as a broker under this division does not authorize the licensee to negotiate or perform any act as a broker in connection with loans made or to be made by a lender not licensed as a finance lender under this division."

(a) Respondent argues that, if a CPLL license does not authorize brokering with unlicensed finance lenders, it must be the case that such brokering is not subject to licensure in the first place. That argument is unpersuasive because it conflates two separate issues: (1) the issue of what activity is subject to licensure, and (2) the issue

of what activity a license authorizes. Those things are not one and the same. It is perfectly possible – indeed commonplace – for a single activity to be both licensable and impermissible for the license-holder. For example, one needs a driver’s license to drive a car, even to drive at 100 miles per hour; at the same time, it is impermissible for license-holders to drive at such speeds. As another example, one needs a bar license to argue in court, even to advance misleading, bad faith arguments; at the same time, it is impermissible for licensed lawyers to make such arguments.

(b) Here, section 22059 addresses only the second issue – i.e., the universe of activity authorized by a CFLL broker’s license. (Section 22059 restricts that universe to brokering with licensed finance lenders.) Section 22059 does not address the first issue – i.e., the universe of activity that is subject to CFLL licensure. That issue is addressed by sections 22004 and 22100.

32. For similar reasons, Section 1422 is unavailing for Respondent as well. Section 1422 sets forth certain language to serve as instructions for completing a CFLL license application:

WHO IS REQUIRED TO OBTAIN A FINANCE LENDERS LICENSE?

In general, any person engaging in the business of a finance lender or finance broker is required to obtain a California Finance Lenders license. The CFLL contains a number of exemptions for persons licensed by other regulatory agencies. [¶] *A finance broker licensed under the CFLL may only broker loans to lenders licensed as finance lenders.* The license does not provide the broker with the authority to broker loans to and collect brokerage commissions from other types of lenders such as credit unions and banks. [Italics added.]

Respondent seizes upon the italicized language to support his position. Specifically, Respondent appears to argue that the italicized language defines what a “finance broker” is under the CFLL. Respondent reasons that, because the italicized language defines “finance broker” as someone who works with licensed finance lenders only, a person who works with unlicensed lenders cannot possibly be a broker. Therefore, the argument goes, such a person cannot be subject to broker licensing under the CFLL.

(a) Respondent’s reasoning is unpersuasive for several reasons. As explained above, Financial Code section 22004 already defines “broker” – i.e., as someone who negotiates loans with finance lenders both licensed and unlicensed. To the extent the italicized language contains an additional definition of “broker,” it is inconsistent with – or, at least, a dramatic reinterpretation of – the definition set forth in statute. Nothing in the rulemaking history of section 1422 suggests that the Department intended for the italicized language to narrow, clarify, modify, or otherwise reinterpret the broad definition of “broker” found in statute. Indeed, if the Department had intended to promulgate a major

reinterpretation of section 22004, it would not have buried the key interpretive language in some application instructions.

A more reasonable reading of the italicized language is that it is an informal restatement of section 22059, intended to help applicants understand what services they may and may not perform under the license. In other words, the italicized language addresses the question of what the license authorizes holders to do, not the question of what activities are subject to licensure. That reading is borne out by the sentence following the italicized language, which alerts applicants that the license does not authorize licensees to broker with banks and credit unions.¹² This is helpful information for an applicant, who may decide that he needs to acquire a different or additional license to obtain additional authorization.¹³

(b) In short, the italicized language is most sensibly read as a “plain English” restatement of section 22059 for applicants about to complete the application. It is not a reinterpretation of section 22004, nor technical guidance about what would trigger liability for unlicensed brokering.

33. Equally important, Respondent’s reading of the law is unpersuasive because it would lead to an absurd and unjust result. If a person need not be licensed to broker with unlicensed finance lenders, that person would enjoy a key advantage over the law-abiding broker who came forward to get licensed. This is so because the licensed broker would be *surrendering* potential lending partners by virtue of obtaining a CFLL license. Moreover, Respondent’s theory creates a category of brokering activity that is essentially unregulatable. In effect, an unlicensed person brokering with unlicensed lenders would be safely ensconced in a regulatory loophole, suffering no consequences for facilitating illicit lending.

34. In contrast, requiring such persons to obtain a CFLL broker’s license gives the Department a mechanism to prevent them from facilitating loans with unlawfully unlicensed finance lenders. Licensure also provides incentive for an unlicensed finance lender to obtain a license because the failure to do so means losing the ability to work with the broker’s clients.

35. Hence, the Department’s contention that a person must be licensed under the CFLL if he or she brokers to anyone fitting the definition of a finance lender, unless the person is exempt from the CFLL, is tenable, and sections 22004 and 22100, subdivision (a), must be read as requiring licensure for brokers dealing with any person meeting the statutory definition of a finance lender, whether licensed or not, unless the lender is exempt from the CFLL. Likewise, Section 22059 must be read as permitting a

¹² Banks and credit unions are exempt from the CFLL (Fin. Code, § 22050, subd. (a)), and therefore not considered licensed finance lenders.

¹³ In contrast to brokers licensed under the CFLL, a broker licensed by the Bureau of Real Estate may broker loans with banks and credit unions. (Bus. & Prof. Code, § 10131.)

licensed broker to broker loans to finance lenders who are exempt from licensure, provided that the activity is not conducted under the authority of the CFLL license.

36. Respondent did not have a license and Respondent was not exempt from licensure. (Factual Finding 2.) The evidence showed-indeed it was undisputed-that respondent's activities included "negotiating" and "performing ... act[s] as broker" (Factual Findings 2-12), and that respondent's brokering activities were in connection with loans being made by at least some companies that would meet the definition of a "finance lender." (Id.) Nevertheless, none of respondent's funding sources were shown to have been licensed or require licensure as finance lenders. (Factual Finding 4.)

37. Consequently, to the extent the Order is based on respondent's unlicensed brokering activities, it is unsubstantiated. Nevertheless, the Order can and should be upheld based on respondent's unlicensed activity as a finance lender. Except as set forth in this decision, all other allegations and contentions lack merit or constitute surplusage.

ORDER

The Desist and Refrain Order issued March 10, 2016 by the Commissioner of Business Oversight, against respondent Financial Services Enterprises dba Pioneer Capital, is affirmed.

Dated: November 29, 2016.

_____/s/_____
JAN LYNN OWEN
Commissioner
Department of Business Oversight

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PROPOSED DECISION

Administrative Law Judge Angela Villegas (ALJ), State of California, Office of Administrative Hearings (OAH), heard this matter May 3 and 4, 2016, in Los Angeles, California.

Charles Carriere, Counsel for the Department of Business Oversight (Department), and Judy Hartley, Senior Counsel for the Department, represented complainant Jan Lynn Owen, Commissioner of Business Oversight (complainant or Commissioner).

Alan Abergel, attorney at law, represented respondent Financial Services Enterprises, dba Pioneer Capital (respondent or Pioneer), whose Chief Executive Officer and sole shareholder, Quinton Berry, also appeared.

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RESPONDENT'S MOTION TO DISMISS

1. On April 18, 2016, respondent filed a motion to dismiss the present proceeding. On April 27, 2016, complainant filed an opposition to the motion. On April 28, 2016, respondent filed a reply to the opposition.
2. The parties did not request oral argument, and neither the ALJ nor a presiding judge ordered oral argument. (Cal. Code Regs., tit. 1, § 1022, subd. (f).) Nevertheless, the ALJ offered both parties a chance to present oral argument at the hearing on May 3, 2016. The parties made arguments, which the ALJ considered.
3. The Motion was denied for the reasons set forth on the record of the hearing.

ISSUE; SUMMARY OF DECISION

1. The issue in this case is: Did respondent engage in the unlicensed business of a finance lender and/or broker, within the meaning of the California Finance Lenders Law, Financial Code sections 22000 et seq. (CFL), such that respondent may appropriately be ordered to Desist and Refrain from that unlicensed activity?¹
2. This decision concludes respondent engaged in the business of a finance lender within the meaning of the CFL. Since respondent engaged in activity requiring licensure, it is proper to order respondent to desist and refrain from its unlicensed activity.

FACTUAL FINDINGS

1. On March 10, 2016, complainant in her official capacity, through Mary Ann Smith, Deputy Commissioner, Enforcement Division, issued a Desist and Refrain Order (Order) against respondent.² On April 6, 2016, respondent requested a hearing. The present proceeding followed.

¹ At the conclusion of the administrative hearing, complainant withdrew the Desist and Refrain Order's allegations that respondent made or published statements that were "false, misleading, or deceptive, and omitted material information necessary to make the statements not false, misleading, or deceptive[.]" in violation of Financial Code section 22161, subdivisions (a) and (b). (Ex. D.) Accordingly, this case does not present the issue whether respondent engaged in that alleged conduct, or whether respondent may be ordered to desist and refrain from it.

² Another Desist and Refrain Order had been issued against respondent on February 8, 2016 (ex. A) and subsequently "withdrawn" (ex. C); it is not the subject of the present proceeding.

2. Respondent is not licensed by the Commissioner as a finance lender or broker, though respondent has twice applied for licensure. (Exs. 6-10; testimony of Quinton Berry.) Indeed, respondent believes the Department mishandled its initial application, and argued that this mishandling cast doubt on the reliability of the Department's legal and factual contentions generally and in this case in particular.³ As of the administrative hearing, respondent's second application was still pending.

3. Respondent's business is to arrange commercial loans and other financing for companies of various sizes.⁴ In so doing, respondent solicits clients in need of financing, evaluates clients' needs and ability to repay, proposes loan terms—including security and lien priority—conducts due diligence and other underwriting activities, collects fees from clients, and makes or participates in the decision whether to lend. (Exs. O, AA-II, KK-TT, VV, WW, YY, CCC, EEE, and GGG; testimony of Quinton Berry, Robert Stefanovich, Skyler Ditchfield, and David Scott Kimball.)

4. (a) The evidence did not show that respondent actually funds loans itself, and did not include documentation of any loans actually consummated. Respondent presented evidence, primarily the testimony of Mr. Berry, that respondent has developed a network of outside funding sources, to which it turns in an effort to provide the financing sought by the client, and that, if any loans were consummated, the money would actually come from those outside sources.

(b) Respondent's outside funding sources include at least one bank and some companies furnishing what Mr. Berry described as venture capital. The evidence did not include a comprehensive inventory of every funding source respondent uses, and did not disclose particulars about the business activities of any funding source. The evidence did indicate at least some of them are engaged in the business of making loans such as the ones respondent sought to arrange, but did not indicate that any of them is licensed under the CFLL as a finance lender.

5. Even though respondent uses outside funding sources, respondent's communications consistently hold it out as a lender, and employ other language indicating respondent can and does decide whether to loan money, and actually loans money, to its clients. (E.g., exs. O (ex. 1 thereto), AA-II, KK-TT, VV, WW, YY, CCC, EEE, and GGG; testimony of Robert Stefanovich, Skyler Ditchfield, and David Scott Kimball.)

6. For example, respondent's advertising/marketing materials describe it as "a global leader in asset based equipment lending, venture leasing, working capital facilities,

³ Respondent also contended the Department's contentions should not be credited because the Department, in respondent's view, improperly posted the Order on its website.

⁴ Sometimes, the financing respondent proposes is in a form other than a loan: e.g., a factoring arrangement. Nevertheless, many of respondent's financing arrangements are loans.

structured finance solutions, and small to mid-ticket leasing solutions.” (Ex. GGG.) Its “Product Offerings . . . include Lease and Loan Financing, Sale Leasebacks, Refinancing of Existing Equipment on a Lease or Loan basis, Growth Capital structured as Term Debt, Mezzanine Debt, Merger/Acquisition Financing, and DIP (Debtor-in-Possession) Financing.” (Ex. RR.)

7. Likewise, in negotiating with some clients, respondent’s representatives, including Mr. Berry, claimed respondent would be the client’s lender and fund the loan itself. (Testimony of Robert Stefanovich, Skyler Ditchfield, and David Scott Kimball.) In addition, respondent issued “term sheets” setting out proposed terms and conditions of the contemplated financing, identifying respondent as both “Lender” and “Creditor,” indicating respondent had a “credit committee,” advising that respondent would take a security interest in the client’s assets, and often including language purporting to subordinate the client’s other debts to “this note.” (E.g., exs. AA-II, LL, NN, CCC, and EEE.)⁵

8. The evidence included 18 term sheets, 10 dating from 2014 and eight from 2015, with financing amounts ranging from \$75,000 (ex. PP) to \$15 million (ex. EE). The evidence did not establish which proposed funding source(s) respondent used, or tried to use, for each of the loans proposed by the term sheets, though Mr. Berry believably testified he planned to use a bank for one such loan, and worked with “venture capital” firms for six of the others.

9. Even as respondent’s communications describe it as a lender, they also equivocate about what respondent does. (Testimony of Quinton Berry; ex. 2.) Some of respondent’s client correspondence discusses respondent’s work with outside funding sources on the client’s behalf. (*Id.*) Respondent’s term sheets maintain they do not constitute a commitment to lend, and refer to the possibility that the eventual loan will be “syndicated.” (E.g., exs. O, AA-II, KK-TT, VV, WW, YY, CCC, EEE, GGG, and 2.) In addition, the term sheets and respondent’s advertising/marketing materials mention respondent’s having an investor group, affiliates, assigns, and the like (*id.*), and on occasion, respondent actually brings a funding source into direct contact with a client. (Testimony of Quinton Berry; ex. 2.)

10. Respondent contended its clients are sophisticated borrowers who would not be misled by any mistaken references to respondent as a lender or other language suggesting respondent itself would be funding the proposed loan. This contention had a modicum of credibility; some of respondent’s customers appeared to have financial sophistication. The evidence did not, however, disclose the sophistication level of others. Moreover,

⁵ In addition to respondent’s advertising/marketing materials, oral representations, term sheets, and correspondence, complainant’s evidence also included complaints and a cross-complaint from civil cases (exs. O-U), alleging respondent was a lender. Complaints against respondent (exs. P, S, T, and U) have negligible evidentiary value, since they simply comprise another party’s allegations. Respondent’s own complaints describing it as a lender, however, constitute additional admissions by respondent.

respondent's contention that its clients should be deemed sophisticated because the client contacts were highly-placed executives within their organizations was unconvincing. A person need not possess financial sophistication to be an executive.⁶

11. Respondent also attempted to disavow writings not actually authored by Mr. Berry, such as the term sheet template and respondent's civil-case complaints, on grounds that respondent retained other professionals, such as corporate and litigation counsel, to draft those materials. Respondent contended the other professionals may have been wrong in characterizing respondent as a lender or in crafting language suggesting that respondent itself funded or approved loans. Respondent's contention was neither persuasive nor credible, because respondent undisputedly issued the communications authored by others on its behalf.

12. In sum, the evidence showed respondent engages in the activities of a commercial lender—short of actually putting up the money—and also in brokering activities.

13. With regard to brokering, the Department's communications to respondent (in correspondence) and to the public (in the Department's Instructions for Completing the Application for a License under the CFLL) indicate that "[a] broker licensed under the [CFLL] can only refer loans to a finance lender who holds a license with the Department." (Exs. 6, 7, and 10.)

LEGAL CONCLUSIONS

Introduction

1. Those who engage in the business of a finance lender or broker must obtain a license from the Commissioner. (Fin. Code, § 22100, subd. (a).)⁷ Under section 22712, subdivision (a), the commissioner may issue a desist and refrain order against any person "engaged in the business as a broker or finance lender . . . without a license[.]"

2. Once a desist and refrain order is served, the affected person has 30 days to request a hearing, and a hearing must then be held within 30 days thereafter, or "the order is rescinded." (§ 22712, subd. (a).) The hearing on the March 10, 2016 Order was timely. (Factual Finding 1.)

3. In a hearing to contest a desist and refrain order, the Commissioner bears the burden of demonstrating grounds to uphold the order. In this case, in which no rights or privileges of licensure are at issue, the applicable standard of proof is preponderance of the

⁶ Besides, client sophistication is irrelevant to whether respondent engages in the business of a finance lender; its relevance was to whether respondent's statements and/or publications were misleading, which is not an issue in this case. (See Legal Conclusion 20.)

⁷ Further statutory references are to the Financial Code, unless otherwise indicated.

evidence. (Evid. Code, §§ 115; 500. See *Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911, 916 [in proceeding to revoke a professional license, a heightened standard of proof applies; in other cases, the preponderance standard applies].)⁸ Respondent’s argument at the hearing and in its closing brief that a higher standard of proof should apply in this case is thus rejected.

4. Complainant met the burden to the extent it showed respondent acted as a finance lender, and the Order against respondent’s continuing to engage in its unlicensed activities as a finance lender should be upheld. (Factual Findings 2-13.)

Respondent Engaged in the Business of a Finance Lender

5. Under section 22009, a “finance lender” includes, in relevant part,
any person who is engaged in the business of . . . making commercial loans. The business of making . . . commercial loans *may include* lending money and taking . . . security for a loan[.]

(Emphasis supplied.)

6. Section 22001, subdivision (a), mandates that the CFLL “be liberally construed and applied to promote its underlying purposes and policies,” which include ensuring an adequate supply of credit; fostering competition among finance lenders; protecting borrowers against unfair practices while recognizing the interests of legitimate and scrupulous lenders; encouraging the development of fair and economically sound lending practices; and promoting a sound economy in the state.

7. Respondent contended section 22009 must be read to mean that a person is not engaged in the business of a finance lender unless the person actually lends money and takes security. Respondent reasoned that Financial Code section 22009’s use of the phrase “may include” to describe the activities of a finance lender must be interpreted to mean “may *only* include” those activities, and if either is missing from the person’s activities, then the person is not a finance lender.

8. Respondent’s contention was not persuasive. Whether read literally or with the liberal construction mandated by section 22001, the phrase “may include” indicates lending money and taking security are *indicia* of finance lending, but not rigid requirements.

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⁸ Once the initial burden has been met and an exemption is claimed, under section 22053, “the burden of proving an exemption is upon the person claiming it.”

9. This interpretation finds support in section 15, stating, “‘Shall’ is mandatory and ‘may’ is permissive.”⁹

10. (a) Further support appears in section 22502, which defines a “commercial loan” under the CFLL as one with a principal amount of \$5,000 or more, or any loan under an open-ended credit program, the proceeds of which are intended for other than personal, family, or household purposes. The loan may be either secured or unsecured. (*Id.*)

(b) Since a commercial loan subject to the CFLL need not be secured, then a person need not “take security” in order to meet the definition of a finance lender under the CFLL. And if taking security is not a requirement, then by extension, neither is “lending money”: that is, funding loans with the finance lender’s own resources.

11. (a) In sum, the activities listed in section 22009 are merely examples of what a finance lender does, but are not mandatory criteria or an exclusive or exhaustive list. “May include” does not mean “may *only* include.” Whether a person lends money and takes security are merely factors in determining whether that person is “engaged in the business of . . . making commercial loans.” (§ 22009.)

(b) Additional factors would include other activities associated with lending, such as holding oneself out as a lender, gathering and analyzing the kinds of information lenders use in determining whether to loan money, evaluating risk, proposing loan terms and conditions, and participating in the decision whether to extend credit.

12. Respondent contended that if the legislature had intended to create a broad definition of “finance lender,” to encompass activities such as respondent’s—that is, activities short of actually making loans and taking security—it could have listed those other activities in section 22009, just as such activities are listed in statutes governing other businesses: e.g., those regulated by the Bureau of Real Estate. (See, e.g., exs. N [citing Bus. & Prof. Code, § 10130] and 16.) This contention was unpersuasive in light of the plain wording of section 22009, as explained above, and the liberal construction mandated by section 22001. Accordingly, the legislature *did* create a broad definition of “finance lender.”

13. Respondent manifestly engaged in the business of making commercial loans within the meaning of section 22009. (Factual Findings 2-12.)

14. Each of the loan financing arrangements contemplated in respondent’s term sheets met the definition of a commercial loan under section 22502. In addition, respondent consistently held itself out as a lender and regularly conducted many activities of a lender, including performing “due diligence” (i.e., collecting and evaluating information relevant to the decision to lend money and the terms on which to lend it), assessing the risk of lending to a particular client, proposing loan terms and conditions—which included providing for itself

⁹ Respondent’s contention that this definition applies only to statutes mandating or allowing a person to act was unduly cramped and therefore unpersuasive.

to take a security interest in clients' assets and for the subordination of clients' other debt—and sharing in or making the ultimate decision whether to lend. (Factual Findings 2-12.)

15. Although the evidence did not establish respondent actually funded loans, and included communications in which respondent indicated it would not itself provide the proposed funding (Factual Findings 2-12), funding loans is not dispositive of whether a person is engaged in the business of making commercial loans. (See Legal Conclusions 5-12.) Respondent's other activities bring it within the definition of a finance lender.

16. Respondent's remaining arguments that it was not engaged in the business of making commercial loans were not persuasive, tending to overcomplicate, even obfuscate, the relatively straightforward facts and law of this case.

17. For example, respondent invoked sections 22013, subdivision (b)(1), and 22014, subdivisions (a) and (b), governing mortgage loan originators (MLOs), to argue it was not required to be licensed merely for "underwriting." (Exs. N and 16.)

18. The short answer to respondent's contention is that MLO statutes do not apply. Respondent is not alleged to have acted as an MLO but as a finance lender—and respondent did act in the latter capacity. (Factual Findings 1-12; see Legal Conclusions 4-15.) According to respondent, however, "It follows that if underwriting of residential mortgage loans for consumer purposes does not require a MLO license, that a commercial loan underwriter does not need a CFL license." (Ex. N.)

19. (a) The cited statutes do not exempt underwriting from licensure even under the MLO scheme.

(b) Section 22013, subdivision (b)(1), provides that a person who merely marshals information necessary to the underwriting process is not an MLO. But the person's activities must "not include offering or negotiating loan rates or terms[.]" things in which respondent regularly engaged. (Factual Findings 2-12.)

(c) Section 22014, subdivisions (a) and (b), concern "[a] loan processor or underwriter who does not represent to the public, through advertising or other means . . . that the individual can or will perform any of the activities of [an MLO.]" Even if respondent's analogy between a finance lender and an MLO held up, respondent repeatedly represented itself to be a lender; thus, the cited exemption would not apply. (Factual Findings 2-12.)

(d) Indeed, section 22014, subdivision (c), mandates licensure for "independent contractor[s]" who "engage in the activities of a loan processor or underwriter for a residential mortgage loan[.]" To the extent respondent argues it was acting as an independent underwriter or loan processor, under its own analogy, it would still have had to

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be licensed. In sum, the MLO statutes do not apply, and even if they did, they would still require licensure for respondent.¹⁰

20. Respondent pointed to its clients' financial sophistication (Factual Finding 10), but clients' sophistication does not alter the conclusion that respondent engaged in the business of making commercial loans: that is to say, engaged in the business of a finance lender.

21. Respondent further contended it is exempt from licensure, and from the CFLL's application, under section 22050, subdivision (e), which provides,

This division does not apply to any person who makes five or fewer loans in a 12-month period, these loans are commercial loans as defined in Section 22502, and the loans are incidental to the business of the person relying upon the exemption.

22. This contention was likewise unpersuasive. To the extent "making loans" means "funding loans," the cited section does not apply to respondent, since respondent was not shown to have actually funded any loans. (Factual Findings 2-12.) If "making loans" were construed to include the type of lending activities in which respondent did engage, then the cited section would not exempt respondent, because respondent made many more than five loans in a 12-month period. (*Id.*) And those activities were not merely "incidental" to respondent's business; they *were* respondent's business. (*Id.*) Accordingly, respondent cannot rely on an exemption for a person conducting another kind of business who extends a few occasional commercial loans as a secondary activity.

23. Moreover, the fact that some of respondent's activities also fall within the ambit of brokering does not extract respondent from the definition of a "finance lender." A person whose activities satisfy the definition of a "finance lender" under section 22009 is a finance lender, regardless of whether some or all of that person's activities would also qualify as brokering. This is respondent's situation.¹¹

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¹⁰ Likewise, the reference in reference in respondent's closing brief to the Commercial Code's definition of "maker" for purposes of the law governing negotiable instruments (ex. 16) had no persuasive impact on the interpretation of section 22009 or the definition of a "finance lender."

¹¹ Respondent's opening and closing briefs were replete with arguments about the activities lenders typically engage in, as compared to typical activities of brokers. Little evidence, and no controlling authority, was presented to substantiate these contentions. Even accepting that many of respondent's activities constituted brokering, such activities are not mutually exclusive from lending. To suggest that a person can act *either* a lender *or* as a broker, but cannot act simultaneously as both, is a logical, factual, and legal fallacy.

24. Finally, respondent's contention that all of the Department's arguments should be discounted because of the Department's mishandling of respondent's initial application for licensure and allegedly-improper posting of the Order on the Department's website is rejected. (Factual Finding 2.) Even if the Department were wrong in both of those matters, it was not wrong in issuing the Order, for the reasons set forth above.

25. Since respondent engaged in the business of a finance lender, and was not exempt from licensure, respondent was required to have a license. (§ 22100, subd. (a).) Respondent did not have a license. (Factual Finding 2.) Consequently, it was proper for the Commissioner to issue the Order against respondent's continuing to engage in those unlicensed activities. (Factual Findings 1-12.) (§ 22712, subd. (a).)

Respondent Was Not Shown to Have Engaged in the Business of a Broker Within the Meaning of the CFLL, But the Order Still Stands

26. Section 22004 defines "broker" to "include[] any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender."

27. Respondent contended this statute means a broker need be licensed only if the broker deals in loans made by *licensed* finance lenders. Conversely, complainant argued a broker must be licensed if the broker deals in loans made by anyone fitting the statutory definition of a finance lender, whether licensed or not.

28. The plain language of section 22004 would seem to support complainant's position. Section 22004 does not confine its application to the activities of brokers working with licensed finance lenders. But given the position expressed by the Department to the public generally and to respondent in particular that, once licensed, a broker must deal exclusively with licensed finance lenders (Factual Finding 13), this cannot be the end of the inquiry.

29. If a broker were required to become licensed based on dealings with unlicensed persons who might qualify as "finance lenders" under the CFLL, then once the person became licensed as a broker, he or she would, according to the Department's directives, have to cease working with the unlicensed lenders and work exclusively with licensed finance lenders. (Factual Finding 13.) Likewise, the Department's position, taken literally, leaves the licensed broker without the ability to broker loans to exempt entities such as banks.

30. It is logically unsound for the Department to insist on licensure for activities in which a licensed person would not be allowed to engage. Furthermore, it would be unfair to credit the Department's broad interpretation of section 22004 in this proceeding, even as the Department conveys an inconsistent view to the public and aspiring licensees.

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31. Hence, the Department's contention that a person must be licensed under the CFLL if he or she brokers to anyone fitting the definition of a finance lender is untenable, and sections 22004 and 22100, subdivision (a), must be read as requiring licensure only for brokers dealing with licensed finance lenders.

32. The evidence showed—indeed it was undisputed—that respondent's activities included “negotiating” and “performing . . . act[s] as broker” (Factual Findings 2-12), and that respondent's brokering activities were in connection with loans being made by at least some companies that would meet the definition of a “finance lender.” (*Id.*) Nevertheless, none of respondent's funding sources were shown to have been licensed finance lenders. (Factual Finding 4.)

33. Since, according to the Department's own mandates, a license to act as a CFLL broker would entitle respondent to deal only with licensed finance lenders, respondent cannot be required to have a broker's license in order to deal with funding sources other than licensed finance lenders.¹² Consequently, to the extent the Order is based on respondent's unlicensed brokering activities, it is unsubstantiated. Nevertheless, the Order can and should be upheld based on respondent's unlicensed activity as a finance lender. Except as set forth in this decision, all other allegations and contentions lack merit or constitute surplusage.

ORDER

The Desist and Refrain Order issued March 10, 2016 by the Commissioner of Business Oversight, against respondent Financial Services Enterprises dba Pioneer Capital, is affirmed.

Dated: June 7, 2016

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ANGELA VILLEGAS
Administrative Law Judge
Office of Administrative Hearings

¹² This is true even though respondent did not establish exemption(s) covering all of its brokering activities.