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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

NO. C-04-014-04-FO01

FINAL ORDER

Construction Funding Corporation, and
Scott C. Michaels, Designated Broker,

Respondents.

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I. DIRECTOR'S CONSIDERATION

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A. Review: This matter has come before the Director to review the Statement of Charges and Notice of Intent to Revoke License, Impose Fines, and Prohibit from Participation in the Mortgage Broker Industry (Statement of Charges) entered by the Director through her designee, Acting Assistant Director Chuck Cross, on February 24, 2004.

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A copy of the Statement of Charges is attached and incorporated into this order by this reference. In every attempt to serve Respondents, the Statement of Charges was accompanied by a Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for Construction Funding Corporation and Scott C. Michaels.

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Statutory Service: Pursuant to RCW 19.146.260, on April 16, 2004, the Department: 1) mailed the Statement of Charges by Certified Mail to Construction Funding Corporation's Registered Agent, CT Corporation System, which CT Corporation System received on April 19, 2004; and 2) sent the Statement of Charges to Construction Funding Corporation by Registered Mail to Construction Funding Corporation's last known address: 425 North Martingale Road Suite 1350, Schaumburg Illinois, 60173. The Registered Mail was returned by the US Post Office as "Not Deliverable as Addressed Unable to Forward." The Department did not receive any request for administrative hearing.

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Other Attempted Service: The Department attempted to serve the Statement of Charges on Respondents by regular US Mail on March 6, 2004, at its last known address, however that attempt failed, and the mailing was returned to the Department as "Moved Left No Forwarding Address."

1 B. Record of Proceedings: The record presented to the Director for her review and for entry of a final
2 decision included the Statement of Charges, the Notice of Opportunity to Defend and Opportunity for Hearing, the
3 blank Application for Adjudicative Hearing, and documentation of service.

4 C. Factual Findings and Grounds For Order: Pursuant to RCW 34.05.440(1), the Director hereby adopts
5 the Statement of Charges, which is attached hereto.

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7 II. FINAL ORDER

8 Based upon the foregoing, and the Director having considered the entire record and being otherwise
9 fully advised, NOW, THEREFORE:

10 A. IT IS HEREBY ORDERED, That:

- 11 1. The mortgage broker license held by Respondent Construction Funding Corporation is revoked;
and
- 12 2. Respondent Scott C. Michaels is prohibited from participation in the conduct of the affairs of
any licensed mortgage broker for a period of five (5) years; and
- 13 3. Respondents, jointly and severally, pay the annual assessment due, in the amount of \$530.86; and
- 14 4. Respondents, jointly and severally, pay an examination fee of \$286.68, calculated at \$47.78 per
15 hour for each staff hour devoted to the investigation (6 hours); and
- 16 5. Respondents, jointly and severally, pay a fine of \$6000.00 calculated at \$100.00 per day for 30
days for:
 - 17 a) One violation of RCW 19.146.205(4); and
 - 18 b) One violation of RCW 19.146.265.

19 B. Reconsideration: Pursuant to RCW 34.05.470, Respondents have the right to file a Petition for
20 Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed in the Office of
21 the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington
22 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of the
23 Final Order upon Respondents. The Petition for Reconsideration shall not stay the effectiveness of this order nor is a
24 Petition for Reconsideration a prerequisite for seeking judicial review in this matter.

1 A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the petition is
2 filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by
3 which it will act on a petition.

4 C. Stay of Order: The Director has determined not to consider a Petition to Stay the effectiveness of this
5 order. Any such requests should be made in connection with a Petition for Judicial Review made under chapter 34.05
6 RCW and RCW 34.05.550.

7 D. Judicial Review: Respondents have the right to petition the superior court for judicial review of this
8 agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial
9 Review, see RCW 34.050.510 and sections following.

10 F. Service: For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review, service
11 is effective upon deposit of this order in the U.S. mail, declaration of service attached hereto.

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13 DATED this 14th day of July, 2004.

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15 STATE OF WASHINGTON
16 DEPARTMENT OF FINANCIAL INSTITUTIONS

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18 /s/ _____
Helen P. Howell
19 Director

1 **1.3 Failure to Pay Annual Assessment:** Payment of the annual assessment is due to the Department no
2 later than the last business day of July of each year. To date, the Department has not received the following
3 annual assessments due from Respondents:

4 A. Payment of the annual assessment of \$530.86 for the year 2003 was due to the Department no
5 later than the last business day of July 2003.

6 B. Payment of the annual assessment of \$530.86 for the year 2004 will be due to the Department no
7 later than the last business day of July 2004.

8 **1.4 Failure to Maintain Bond:** On September 15, 2003, the Department received notice from RLI Surety
9 Division of RLI Insurance Company, that Construction Funding's surety bond was cancelled. To date,
10 Respondents have not notified the Department that Construction Funding's surety bond had been cancelled, nor
11 have Respondents replaced the surety bond.

12 **1.5 Failure to Submit Continuing Education Certificate:** A certificate of satisfactory completion of an
13 approved continuing education course was due to the Department no later than the last day of July of 2003. To
14 date, the Department has not received the required certificate due from Respondent Michaels.

15 **1.6 Failure to Respond to Directive Requirement:** On October 22, 2003, the Department issued a directive
16 to Respondents requiring replacement of Construction Funding's bond. To date, the Department has not received
17 a response to its directive.

18 **1.7 Failure to Notify DFI of Significant Developments:**

19 A. As stated in 1.4 above, to date, Respondents have not notified the Department of the cancellation
20 of its surety bond.

21 B. Construction Funding's corporate license, maintained with the office of the Secretary of State,
22 expired on March 31, 2003. To date, Respondents have not notified the Department of this
23 change in Construction Funding's status with the Secretary of State, nor has Construction
24 Funding renewed its corporate license.

1 C. Construction Funding's Master Business License account with the Washington State Department
2 of Licensing was dissolved on June 23, 2003. To date, Respondents have not notified the
3 Department of this change in Construction Funding's Master Business License.
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5 II. GROUNDS FOR ENTRY OF ORDER

6 **2.1 Requirement to Pay Annual Assessments:** Pursuant to RCW 19.146.228 and WAC 208-660-060(3),
7 every licensed mortgage broker shall pay an annual assessment no later than the last business day of the month in
8 which the anniversary date of the issuance of the license occurs.

9 **2.2 Requirement to Maintain Bond:** Pursuant to RCW 19.146.205(4), each licensee shall file and maintain
10 a surety bond.

11 **2.3 Requirement to Submit Certificate of Completion of Continuing Education:** Pursuant to RCW
12 19.146.215, the designated broker of every licensee shall complete an annual continuing education requirement.
13 Pursuant to WAC 208-660-042, each licensee must file annually a certificate of satisfactory completion of an
14 approved continuing education course.

15 **2.4 Requirement to Notify of Significant Developments:** Pursuant to WAC 208-660-150(1)(e), every
16 licensee must notify the Director within thirty days after receiving notification of the cancellation of the licensee's
17 surety bond. Pursuant to WAC 208-660-150(3)(e) and (f), every licensee must notify the Director within five
18 days after a change in the licensee's state master business licensee or standing with the state of Washington
19 Secretary of State.

20 **2.5 Authority to Revoke License:** Pursuant to RCW 19.146.220(2)(b)(ii) and (iii), and WAC 208-660-
21 160(1), (2), (8), and (13), the Director may revoke a license for failure to pay a required annual assessment, for
22 failure to maintain the required surety bond, and for failure to comply with any directive or order of the Director.

23 **2.6 Authority to Charge Examination Fee:** Pursuant to RCW 19.146.228(2), and WAC 208-660-060(2), upon
24 completion of any examination of the books and records of a licensee, the Department will furnish to the licensee a

1 billing to cover the cost of the examination. The examination charge will be calculated at the rate of forty-seven dollars
2 and seventy-eight cents (\$47.78) per hour that each staff person devoted to the examination.

3 **2.7 Authority to Impose Fine:** Pursuant to RCW 19.146.220(2)(c)(i) and (ii) and WAC 208-660-165, the
4 Director may impose fines on the licensee for failure to maintain the required surety bond, and for failure to
5 comply with any directive or order of the Director.

6 **2.8 Authority to Prohibit from the Industry:** Pursuant to RCW 19.146.220(2)(e)(i) and (iv), the Director
7 may prohibit a covered individual from participation in the conduct of the affairs of a licensed mortgage broker for
8 failure to maintain the required surety bond and for failure to comply with any directive or order of the Director.

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10 **III. NOTICE OF INTENT TO ENTER ORDER**

11 Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth in
12 the above Facts and Grounds for Entry of Order, constitute a basis for the entry of an Order under RCW 19.146.220.
13 Therefore, it is the Director's intention to ORDER that:

- 14 3.1 The mortgage broker license held by Respondent Construction Funding Corporation be revoked; and
- 15 3.2 Respondent Scott C. Michaels be prohibited from participation in the conduct of the affairs of any
16 licensed mortgage broker for a period of five (5) years; and
- 17 3.3 Respondents, jointly and severally, pay the annual assessment due, in the amount of \$530.86, as calculated
18 in 1.3 above; and
- 19 3.4 Respondents, jointly and severally, pay an examination fee of \$286.68, calculated at \$47.78 per hour for
20 each staff hour devoted to the investigation (6 hours); and
- 21 3.5 Respondents, jointly and severally, pay a fine of \$6000.00 for:
22 a) Failure to maintain the required bond, calculated at \$100.00 per day for 30 days; and
23 b) Failure to comply with a directive, calculated at \$100.00 per day for 30 days.

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IV. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges and Notice of Intent to Revoke License, Impose Fines and Prohibit from Participation in the Mortgage Broker Industry.

Dated this 24th day of February, 2004.

/s/ _____
CHUCK CROSS, ACTING DIRECTOR
DIVISION OF CONSUMER SERVICES
DEPARTMENT OF FINANCIAL INSTITUTIONS

Presented by:

Victoria W. Sheldon, Financial Legal Examiner

1 **RCW 19.146.205 License – Application – Exchange of fingerprint data with federal bureau of investigation – Fee – Bond or alternative.**

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3 (4)(a) Each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater
4 than sixty thousand dollars nor less than twenty thousand dollars which the director deems adequate to protect the public
5 interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as
6 surety. The bonding requirement as established by the director may take the form of a uniform bond amount for all
7 licensees or the director may establish by rule a schedule establishing a range of bond amounts which shall vary according
8 to the annual average number of loan originators or independent contractors of a licensee. The bond shall run to the state
9 of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any
10 person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this
11 chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully
12 conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer
13 loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the
14 state and other persons. The state and other third parties shall be allowed to receive distribution pursuant to a valid claim
15 against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final
16 judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be
17 continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel
18 the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the
19 bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or
20 decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be
21 liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall
22 the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability.
23 The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased
24 damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the
25 surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if
the arrangement provides at least as much coverage as is required under this subsection.

(b) In lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit,
an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director
for an amount equal to the required bond.

(c) In lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage
from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of
insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage
under this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance
commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may
be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims
within the financial responsibility limits specified in (a) of this subsection. [1997 c 106 § 9; 1994 c 33 § 8; 1993 c 468 §
6.]

Severability – 1997 c 106: See note following RCW 19.146.100. Adoption of rules – Severability – 1993 c 468: See notes
following RCW 19.146.020. Effective dates – 1993 c 468: See note following RCW 19.146.200.

20 **RCW 19.146.215 Continuing education – Rules.** The designated broker of every licensee shall complete an annual
continuing education requirement, which the director shall define by rule. [1997 c 106 § 11; 1994 c 33 § 11.]

21 Severability – 1997 c 106: See note following RCW 19.146.010.

22 **RCW 19.146.220 Director – Powers and duties – Violations as separate violations – Rules.** (1) The director shall
enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and
hold hearings.

(2) The director may impose the following sanctions:

24 . . .

(b) Suspend or revoke licenses for:

- 1 (i) False statements or omission of material information on the application that, if known, would have allowed the
director to deny the application for the original license;
- 2 (ii) Failure to pay a fee required by the director or maintain the required bond;
- 3 (iii) Failure to comply with any directive or order of the director; or
- 4 (iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or
19.146.265;
- 5 (c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:
- 6 (i) Any violations of RCW 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200,
19.146.205(4), or 19.146.265; or
- 7 (ii) Failure to comply with any directive or order of the director;
- 8 . . .
- 9 (e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage
broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject
to licensing under this chapter for:
- 10 (i) Any violation of 19.146.0201(1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or
19.146.265;
- 11 . . .
- 12 (iv) Failure to comply with any directive or order of the director.
- 13 (3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and
distinct violation or failure.
- 14 . . .
- 15 [1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

16 **RCW 19.146.221 Action by director – Hearing – Sanction.** The director may, at his or her discretion and as provided
for in *RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does
not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on
the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after
hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then
the director may impose any sanction authorized by this chapter. [1994 c 33 § 13.]

17 **RCW 19.146.223 Director – Administration and interpretation.** The director shall have the power and broad
administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as
expressed in RCW 19.146.005. [1994 c 33 § 2.]

18 **RCW 19.146.228 Fees – Rules – Exception.** The director shall establish fees by rule in accordance with RCW 43.24.086
sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

- 19 (1) An annual assessment paid by each licensee on or before a date specified by rule
- 20 (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person
subject to this chapter; [1997 c 106 § 13; 1994 c 33 § 9.]

21 **RCW 19.146.230 Administrative procedure act application.** The proceedings for denying license applications, issuing
cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant
to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative
procedure act, chapter 34.05 RCW. [1994 c 33 § 16; 1993 c 468 § 10.]

1 **WAC 208-660-042 Continuing education requirement.** (1) The principal or designated broker of a licensee
2 must satisfactorily complete an approved continuing education course annually. Each licensee must file annually a
3 certificate of satisfactory completion of an approved continuing education course by the licensee's principal or designated
4 broker no later than the last business day of the month in which the anniversary date of the issuance of the licensee's
5 license occurs.

(2) This section applies to each licensee beginning on the first anniversary date of the issuance of the licensee's license
which occurs after December 31, 1995. (For example, if a licensee's license was issued on January 10, 1994, then the
licensee must submit its first certificate of satisfactory completion of an approved continuing education course no later
than the last business day of January 1996.)

[Statutory Authority: [RCW 43.320.010](#), [19.146.223](#). 01-01-044, § 208-660-042, filed 12/8/00, effective 1/8/01; 96-04-
028, recodified as § 208-660-042, filed 2/1/96, effective 4/1/96. Statutory Authority: [RCW 19.146.225](#). 95-13-091, § 50-
60-042, filed 6/21/95, effective 7/22/95.]

7 **WAC 208-660-060 Department's fees and assessments.**

8 (2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the
9 licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of \$46.26 per
10 hour that each staff person devoted to the examination. The examination billing will be paid by the licensee promptly
upon receipt. Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost
of the first compliance examination of the licensee conducted by the department during the first two years after the date of
issuance of the license.

11 (3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each
12 branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which
the anniversary date of the issuance of the broker's license occurs.

13 **WAC 208-660-150 Disclosure of significant developments.** (1) A licensee must notify the director in writing
within thirty days after the occurrence of any of the following developments:

- 14 (a) Licensee's filing for bankruptcy or reorganization.
15 (b) Receipt of notification of license revocation procedures in any state against the licensee.
16 (c) The filing of a felony indictment or information related to mortgage brokering activities of the licensee, or any
officer, director, principal, or designated broker of the licensee.
17 (d) The licensee, or any officer, director, principal, or designated broker of the licensee being convicted of a felony.
18 (e) Receipt of notification of cancellation of the licensee's surety bond or approved alternative, or any significant
decline in value of an approved alternative held by the director.
19 (f) The filing of any material litigation against the licensee.
20 (2) A licensee must notify the director in writing ten days prior to a change of the location of the licensee's principal place
of business or any of its branch offices.
21 (3) A licensee must notify the director in writing within five days after a change in the licensee's:
22 (a) Name or legal status (e.g., from sole proprietor to corporation, etc.);
23 (b) Mailing address or telephone number;
24 (c) President, partner, designated broker, or branch office manager;
25 (d) Trust account (e.g., change in the status, location, or account number);
(e) State master business license; or
(f) Standing with the state of Washington secretary of state.

[96-04-028, recodified as § 208-660-150, filed 2/1/96, effective 4/1/96. Statutory Authority: [RCW 19.146.225](#). 95-13-091,
§ 50-60-150, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-150, filed 1/7/94,
effective 2/7/94.]

24 **WAC 208-660-160 License application denial or condition; license suspension or revocation.** The director may
deny or condition approval of a license application, or suspend or revoke a license if the applicant or licensee, or any

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principal or designated broker of the applicant or licensee:

(1) Has failed to pay a fee due to the state in accordance with the Mortgage Broker Practices Act;

...

(13) Has failed to comply with an order, directive, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

WAC 208-660-165 Fines and penalties for violation of the Mortgage Broker Practices Act. Each mortgage broker and each of its principals, designated brokers, officers, employees, independent contractors, and agents shall comply with the applicable provisions of the Mortgage Broker Practices Act. Each violation of any applicable provision of the Mortgage Broker Practices Act, or of any order, directive, or requirement of the director may, at the discretion of the director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's continuance of the violation is a separate and distinct offense. In addition, the director in his or her discretion may by order assess other penalties for a violation of the Mortgage Broker Practices Act.