

1 STATE OF WASHINGTON
2 DEPARTMENT OF FINANCIAL INSTITUTIONS
3 OFFICE OF THE DIRECTOR

4 In the Matter of:)
5 ALLSTATE FINANCIAL SERVICES,) Case No. 2001-124-C01
6 INC., and ROBERT WARNOCK,)
7 PRESIDENT, Designated Broker and) On Review/Appeal from Initial Decision
8 Owner,) and Order of Office of Administrative
9 Respondents.) Hearings (OAH) Docket No. 2001-DFI-
10) 0006
11) FINAL DECISION AND ORDER
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

11 THIS MATTER having come before the Honorable Helen P. Howell, Director
12 (hereinafter, "Director") of the Washington State Department of Financial Institutions
13 (hereinafter, "Department"), upon the request for review of and appeal from the Initial
14 Decision and Order dated November 22, 2002, of Adam E. Torem, Administrative Law
15 Judge (hereinafter, "ALJ"), of the Office of Administrative Hearings (hereinafter, "OAH");
16 and the Director having reviewed the complete record in the above-entitled matter, including
17 the verbatim report of proceedings and exhibits in the adjudicative hearing before the ALJ,
18 coupled with all administrative pleadings, including the Initial Decision and Order; the
19 Director does hereby make the following final, administrative determination and order
20 pursuant to her authority under RCW §§ 19.146.220(2) and 19.146.221:

21 FINDINGS AND CONCLUSIONS ON REVIEW

22 The Director finds that the ALJ was correct in all of his Findings of Fact and
23 Conclusions of Law, as set forth in the Initial Decision and Order dated November 22, 2002,
24 except to the extent that the ALJ applied a "clear, cogent and convincing evidence "
25 standard of proof to support his decision, relying upon Bang Nguyen v. Department of

1 Health, 144 Wn.2d 516, 29 P.3d 689 (2001) and Nims v. Washington Board of Registration,
2 113 Wn. App. 499, 53 P.3d 52 (2002).

3 The Director concludes that the application by the ALJ of the “clear, cogent and
4 convincing evidence” standard of proof, especially based upon the aforementioned cases,
5 was error and that those cases are inapplicable to and their facts distinguishable from the
6 above-entitled matter.

7 The Director, therefore, concludes that a “preponderance of the evidence” standard
8 of proof, as provided in RCW § 19.146.221, is the correct standard of proof to be followed
9 in this matter, and that the sanctions and relief called for in the Initial Decision and Order
10 were fair, just and appropriate based upon the preponderance of the evidence” standard of
11 proof.

12 However, the Director further finds and concludes that if a “clear, cogent and
13 convincing evidence” standard were to be applied, the record would still support upholding
14 the Initial Decision and Order.

15 The sanctions against the above-named Respondents as set forth in the Initial
16 Decision and Order are, therefore, fair, just and appropriate based upon a “preponderance of
17 the evidence” standard, as applied here, and also upon a “clear, cogent and convincing
18 evidence” standard of proof, if the latter were to be applied.

19 The Director has the authority pursuant to RCW § 19.146.220 to issue a final
20 administrative decision and order for sanctions as provided herein.

21 FINAL ORDER

22 In accordance with the Findings and Conclusions on Review, as set forth above,
23 which are supported by the record and the Findings of Fact and Conclusions of Law as set
24 forth in the Initial Decision and Order, IT IS HEREBY ORDERED THAT:

- 1 1. Revocation of License. The mortgage broker license issued by the Department to
2 Allstate Financial Services, Inc. (hereinafter, “Allstate”), is hereby revoked for a
3 period of five (5) years.
- 4 2. Removal of Designated Broker from Office. Allstate’s Designated Broker,
5 Robert Warnock, is immediately removed from office and hereby prohibited
6 from any further participation as an officer, principal, employee, or loan
7 originator in the conduct of the affairs of any licensed mortgage broker or
8 mortgage broker subject to licensing under the Mortgage Brokers Practices Act
9 (RCW 19.146), for a period of five (5) years.
- 10 3. Fines. Allstate and/or Robert Warnock (hereinafter, “Warnock”) shall pay a fine
11 in the amount of Fifty Thousand Dollars (\$50,000.00) as a penalty for violating
12 the multiple sections of the Mortgage Brokers Practices Act as set forth in the
13 Initial Decision and Order, dated November 22, 2002, and incorporated herein by
14 this reference.
- 15 4. Restitution. Allstate and Warnock shall immediately pay restitution, as follows:
16 a. To Ms. Sandra Brown, in the amount of Three Thousand Nine Hundred
17 Twenty One Dollars (\$3,921.00).
18 b. To Charles and Susan Matteson, in the amount of One Hundred Seventy Five
19 Dollars (\$175.00).
20 c. To Mercer & Associates, in the amount of Fifty Dollars (\$50.00).
21 d. To Maureen Thompson, in the amount of One Thousand Five Hundred
22 Seventy Five Dollars (\$1,575.00).
- 23 5. Costs of Investigation and Examination. Allstate and/or Warnock shall pay to
24 the Department a total of Three Thousand Two Hundred Sixty Seven Dollars
25

1 (\$3,267.00) as costs of the investigation and examination of the six (6)
2 complaints identified in the Initial Decision and Order.

3 6. Maintenance of Books and Records. Allstate shall ensure that it maintains all of
4 its books and records in compliance with RCW § 19.146.060.

5 7. Reconsideration. Pursuant to RCW 34.05.470, Respondents have the right to
6 file a Petition for Reconsideration stating the specific grounds upon which relief
7 is requested. The Petition must be filed in the Office of the Director of the
8 Department of Financial Institutions by courier at 150 Israel Road SW,
9 Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,
10 Washington 98504-1200, within ten (10) days of service of the Final Order upon
11 Respondent. The Petition for Reconsideration shall not stay the effectiveness of
12 this order nor is a Petition for Reconsideration a prerequisite for seeking judicial
13 review in this matter. A timely Petition for Reconsideration is deemed denied if,
14 within twenty (20) days from the date the petition is filed, the agency does not (a)
15 dispose of the petition or (b) serve the parties with a written notice specifying the
16 date by which it will act on a petition.

17 8. Stay of Order. The Director has determined not to consider a Petition to Stay the
18 effectiveness of this order. Any such requests should be made in connection with
19 a Petition for Judicial Review made under chapter 34.05 RCW and RCW §
20 34.05.550.

21 9. Judicial Review. Respondents have the right to petition the Superior Court for
22 judicial review of this agency action under the provisions of chapter 34.05 RCW.
23 For the requirements for filing a Petition for Judicial Review, see RCW
24 34.050.510 and sections following.
25

