

ORDER SUMMARY – Case Number: C-15-1661

Name(s): Avant Capital LLC; Noel B Scruggs

Order Number: C-15-1661-17-CO01

Effective Date: June 6, 2017

License Number: U/L
Or NMLS Identifier [U/L] _____

License Effect: N/A

Not Apply Until: N/A

Not Eligible Until: N/A

Prohibition/Ban Until: N/A

| | | | | |
|--|---|-----|--|----------------|
| Investigation Costs | \$1,925.37 | Due | Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N | Date 6/6/17 |
| Fine | \$3,000 paid \$3,000 Stayed | Due | Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N | Date 6/6/17 |
| Assessment(s) | \$ | Due | Paid <input type="checkbox"/> Y <input type="checkbox"/> N | Date |
| Restitution | \$ | Due | Paid <input type="checkbox"/> Y <input type="checkbox"/> N | Date |
| Judgment | \$ | Due | Paid <input type="checkbox"/> Y <input type="checkbox"/> N | Date |
| Satisfaction of Judgment Filed? | <input type="checkbox"/> Y <input type="checkbox"/> N | | | |
| | No. of Victims: | 2 | | |

Comments: Cease and desist engaging in business of consumer loan company without first obtaining a license. Re-convey
Deeds of trust securing residential mortgage loans on Washington real property (completed). \$3,000 of fine stayed based
on compliance with terms of Consent Order, maintain records in compliance with the Act.

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **DIVISION OF CONSUMER SERVICES**

4 IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

No.: C-15-1661-17-CO01

CONSENT ORDER

5 Avant Capital, LLC; and
6 Noel B. Scruggs, President,

7 Respondents.

8 COMES NOW the Director of the Department of Financial Institutions (Director), through
9 her designee Charles E. Clark, Division Director, Division of Consumer Services, and Avant Capital,
10 LLC and Noel B. Scruggs (Respondents), and finding that the issues raised in the above-captioned
11 matter may be economically and efficiently settled, agree to the entry of this Consent Order. This
12 Consent Order is entered pursuant to chapter 31.04 of the Revised Code of Washington (RCW), and
13 RCW 34.05.060 of the Administrative Procedure Act, based on the following:

14 **AGREEMENT AND ORDER**

15
16 The Department of Financial Institutions, Division of Consumer Services (Department) and
17 Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges
18 No. C-15-1661-15-SC01 (Statement of Charges), entered May 6, 2016, (copy attached hereto).
19 Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act), and RCW 34.05.060 of the
20 Administrative Procedure Act, Respondents hereby agree to the Department's entry of this Consent
21 Order and further agree that the issues raised in the above-captioned matter may be economically and
22 efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully
23 resolve the Statement of Charges. Respondents are agreeing not to contest the Statement of Charges
in consideration of the terms of this Consent Order.

24 Based upon the foregoing:

CONSENT ORDER
C-15-1661-17-CO01
AVANT CAPITAL, LLC
NOEL B. SCRUGGS

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

1 A. **Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter
2 of the activities discussed herein.

3 B. **Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a
4 hearing before an administrative law judge, and hereby waive their right to a hearing and any and all
5 administrative and judicial review of the issues raised in this matter, or of the resolution reached
6 herein. Accordingly, Respondents, by their signatures and the signatures of their representatives
7 below, withdraw their appeal to the Office of Administrative Hearings.

8 C. **No Admission of Liability.** The parties intend this Consent Order to fully resolve the
9 Statement of Charges and agree that Respondents do not admit to any wrongdoing by its entry.

10 D. **No Unlicensed Activity.** It is AGREED and ORDERED that Respondents will not
11 engage, in any capacity, in the business of a consumer loan company requiring a license in
12 Washington without first obtaining and maintaining a license under the Act.

13 E. **Re-conveyance.** It is AGREED and ORDERED that Respondents will re-convey the
14 deeds of trust securing any residential mortgage loan on Washington real property within ninety days
15 of the entry of this Consent Order.

16 F. **Fine.** It is AGREED that Respondents shall pay a fine to the Department in the amount of
17 \$6,000.00, in the form of a cashier's check made payable to the "Washington State Treasurer," upon
18 entry of this Consent Order.

19 G. **Stay of Fine.** It is AGREED that \$3,000.00 of the fine referenced in Paragraph F will be
20 STAYED based on Respondents' compliance with all of the terms of this Consent Order.

21 H. **Lifting of Stay.** It is AGREED that:

- 22 1. If the Department determines that Respondents have not complied with any of the
23 terms of this Consent Order, and the Department accordingly seeks to lift the stay and
impose the fine set forth in Paragraph G above, the Department will first notify
24 Respondents in writing of its determination.

- 1
- 2 2. The Department's notification will include:
- 3 i. A description of the alleged noncompliance;
- 4 ii. A statement that because of the noncompliance, the Department seeks to lift the stay and impose the fine;
- 5 iii. The opportunity for Respondents to contest the Department's determination of noncompliance in an administrative hearing before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH); and
- 6
- 7 iv. A copy of this Consent Order. The notification and hearing process provided in this Consent Order applies only to this Consent Order. It is solely provided in the event Respondents choose to contest the Department's determination of noncompliance.
- 8
- 9
- 10 3. Respondents will be afforded ten (10) business days from the date of receipt of the Department's notification to submit a written request to the Department for an administrative hearing to be held before an ALJ from the OAH.
- 11
- 12 4. Respondents, in addition to their request for hearing, may provide a written response to include any information pertaining to the alleged noncompliance.
- 13
- 14 5. The administrative hearing shall follow the timing and processes described in this Consent Order.
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- 16 6. The scope and issues of the hearing are limited solely to whether or not Respondents are in violation of the terms of this Consent Order.
- 17
- 18 7. At the conclusion of the hearing, the ALJ will issue an initial decision. Either party may file a Petition for Review with the Director of the Department.
- 19
- 20 8. If Respondents do not request the hearing within the stated time, the Department will impose the fine and pursue whatever action it deems necessary to enforce the sanctions.

21 I. **Rights of Non-Parties.** It is AGREED that the Department does not represent or have the consent of any person or entity not a party to this Consent Order to take any action concerning their personal legal rights. It is further AGREED that for any person or entity not a party to this Consent Order, this Consent Order does not limit or create any private rights or remedies against Respondents, limit or create liability of Respondents, or limit or create defenses of Respondents to any claims.

1 J. **Investigation Fee.** It is AGREED that Respondents shall pay to the Department an
2 investigation fee of \$1,925.37, in the form of a cashier's check made payable to the "Washington
3 State Treasurer," upon entry of this Consent Order. The portion of the Fine which has not been
4 stayed and the Investigation Fee may be paid together in one \$4,925.37 cashier's check made payable
5 to the "Washington State Treasurer."

6 K. **Records Retention.** It is AGREED that Respondents, their officers, employees, and
7 agents shall maintain records in compliance with the Act and provide the Director with the location
8 of the books, records and other information relating to Respondents' consumer loan company
9 business, and the name, address and telephone number of the individual responsible for maintenance
10 of such records in compliance with the Act.

11 L. **Non-Compliance with Order.** It is AGREED that Respondents understand that failure to
12 abide by the terms and conditions of this Consent Order may result in further legal action by the
13 Director. In the event of such legal action, Respondents may be responsible to reimburse the Director
14 for the cost incurred in pursuing such action, including but not limited to, attorney fees.

15 M. **Voluntarily Entered.** It is AGREED that Respondents have voluntarily entered into this
16 Consent Order, which is effective when signed by the Director's designee.

17 N. **Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read
18 this Consent Order in its entirety and fully understand and agree to all of the same.

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20 **RESPONDENTS:**
21 **Avant Capital, LLC**
By:

22 /s/ _____
NOEL B. SCRUGGS
President

3/31/2017 _____
Date

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/s/
NOEL B. SCRUGGS
Individually

3/31/2017
Date

Approved for Entry:

/s/
Mike DeLeo, WSBA No.22037
Attorney at Law
Peterson Russell Kelly PLLC
Attorney for Respondents

3/31/2017
Date

DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS 6th DAY OF June, 2017.

/s/
CHARLES E. CLARK
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

/s/
ROBERT E. JONES
Financial Legal Examiner Supervisor

Approved by:

/s/
STEVEN C. SHERMAN
Enforcement Chief

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **DIVISION OF CONSUMER SERVICES**

4 IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

5 Avant Capital, LLC; and
6 Noel B. Scruggs, President,

7 Respondents.

No. C-15-1661-16-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER AN
ORDER TO CEASE AND DESIST,
PROHIBIT FROM INDUSTRY, IMPOSE
FINE, COLLECT INVESTIGATION FEE,
and COLLECT COSTS OF PROSECUTION

8 **INTRODUCTION**

9 Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial
10 Institutions of the State of Washington (Director) is responsible for the administration of chapter
11 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to
12 RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the
13 Director, through his designee, Division of Consumer Services Director Charles E. Clark, institutes
14 this proceeding and finds as follows:

15 **I. FACTUAL ALLEGATIONS**

16 **1.1 Respondents.**

17 A. **Avant Capital, LLC (Respondent Avant Capital)** has never been licensed by the
18 Department of Financial Institutions of the State of Washington (Department) to
19 conduct business as a consumer loan company.

20 B. **Noel B. Scruggs (Respondent Scruggs)** is President of Respondent Avant Capital.
21 Respondent Scruggs has never been licensed by the Department to conduct business as
22 a mortgage loan originator.

1 **1.2 Unlicensed Servicing.** Between at least August 1, 2014, and February 20, 2015, Respondent
2 Avant Capital serviced two residential mortgage loans secured by residential real property located in
3 Washington State.

4 **1.3 Unlicensed Mortgage Loan Originator Activity.** Between at least August 1, 2014, and
5 December 30, 2014, Respondent Scruggs held himself out to Washington borrowers as being able to
6 engage in the business of a mortgage loan originator.

7 **1.4 Omissions and Misrepresentations.** Respondents represented to Washington consumers
8 that they were licensed to provide residential mortgage loan servicing services or omitted disclosing
9 to Washington consumers that they were not licensed to provide those services.

10 **1.5 Ongoing Investigation.** The Department's investigation into the alleged violations of the Act
11 by Respondents continues to date.

12 II. GROUNDS FOR ENTRY OF ORDER

13 **2.1 Servicing Defined.** Pursuant to RCW 31.04.015(28) "Service or servicing a loan" means on
14 behalf of the lender or investor of a residential mortgage loan: (a) Collecting or receiving payments
15 on existing obligations due and owing to the lender or investor, including payments of principal,
16 interest, escrow amounts, and other amounts due; (b) collecting fees due to the servicer; (c) working
17 with the borrower and the licensed lender or servicer to collect data and make decisions necessary to
18 modify certain terms of those obligations either temporarily or permanently; (d) otherwise finalizing
19 collection through the foreclosure process; or (e) servicing a reverse mortgage loan. Pursuant to
20 WAC 208-620-011 "service" or "servicing a loan" means, with respect to residential mortgage loans:
21 (a) Collecting or attempting to collect payments on existing obligations due and owing to the lender
22 or investor, including payments of principal, interest, escrow amounts, and other amounts due; (b)
23 Collecting fees due to the servicer for the servicing activities; (c) Working with the borrower to

1 collect data and make decisions necessary to modify certain terms of those obligations either
2 temporarily or permanently; or (d) Otherwise finalizing collection through the foreclosure process.

3 **2.2 Mortgage Loan Originator Defined.** Pursuant to RCW 31.04.015(17) “mortgage loan
4 originator” means an individual who for compensation or gain offers or negotiates terms of a
5 residential mortgage loan. “Mortgage loan originator” also includes individuals who hold themselves
6 out to the public as able to perform any of these activities. “Mortgage loan originator” also includes
7 an individual who for direct or indirect compensation or gain performs residential mortgage loan
8 modification services or holds himself or herself out as being able to perform residential mortgage
9 loan modification services.

10 **2.3 Unlicensed Mortgage Servicing.** Based on the Factual Allegations set forth in Section I
11 above, Respondents are in apparent violation of RCW 31.04.035(1) for servicing residential
12 mortgage loans without first obtaining and maintaining a license under the Act.

13 **2.4 Unlicensed Mortgage Loan Originator Activity.** Based on the Factual Allegations set forth
14 in Section I above, Respondent Scruggs is in apparent violation of RCW 31.04.221 for engaging in
15 the business of a mortgage loan originator without first obtaining and maintaining a license under the
16 Act.

17 **2.5 Unfair or Deceptive Practice.** Based on the Factual Allegations set forth in Section I above,
18 Respondents are in apparent violation of RCW 31.04.027(2) for directly or indirectly engaging in any
19 unfair or deceptive practice toward any person.

20 III. AUTHORITY TO IMPOSE SANCTIONS

21 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 31.04.093(5)(a), the
22 Director may issue orders directing a loan originator or other person subject to the Act to cease and
23

1 desist from conducting business in a manner that is injurious to the public or violates any provision of
2 the Act.

3 **3.2 Authority to Prohibit from the Industry.** Pursuant to RCW 31.04.093(6), the Director may
4 issue an order prohibiting from participation in the affairs of any licensee, any officer, principal,
5 employee, or any other person subject to the Act for (e) A violation of RCW 31.04.027 or RCW
6 31.04.221; or (f) Failure to obtain a license for activity that requires a license.

7 **3.3 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of
8 up to one hundred dollars per day, per violation, upon a loan originator, or any other person subject to
9 the Act for any violation of the Act.

10 **3.4 Authority to Charge Examination Fee and Investigation Fee.** Pursuant to RCW
11 31.04.145(3) and WAC 208-620-590, every licensee examined or investigated by the Director or the
12 Director's designee shall pay for the cost of the examination or investigation, calculated at the rate of
13 \$69.01 per staff hour devoted to the examination or investigation, and shall pay travel costs if the
14 licensee maintains its records outside the state.

15 **3.5 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director
16 may recover the state's costs and expenses for prosecuting violations of the Act.

17 **IV. NOTICE OF INTENTION TO ENTER ORDER**

18 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,
19 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
20 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and
21 RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

22 **4.1** Respondents Avant Capital, LLC and Noel B. Scruggs cease and desist servicing
23 residential mortgage loans secured by property located in Washington State.

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- 4.2** Respondent Noel B. Scruggs cease and desist engaging in the business of a mortgage loan originator.
- 4.3** Respondents Avant Capital LLC and Noel B. Scruggs be prohibited from participation in the conduct of the affairs of any consumer loan company subject to licensure by the Director, in any manner, for a period of five years.
- 4.4** Respondents Avant Capital, LLC and Noel B. Scruggs jointly and severally pay a fine. As of the date of this Statement of Charges, the fine totals \$12,000.
- 4.5** Respondents Avant Capital, LLC and Noel B. Scruggs jointly and severally pay an investigation fee. As of the date of this Statement of Charges, the investigation fee totals \$1,925.37.
- 4.6** Respondents Avant Capital, LLC and Noel B. Scruggs pay the Department’s costs and expenses for prosecuting violations of the Act in an amount to be determined at hearing or by declaration with supporting documentation in event of default by Respondents.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist,
3 Prohibit from Industry, Impose Fine, Collect Investigation Fee, and Collect Costs of Prosecution
4 (Statement of Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW 31.04.165,
5 RCW 31.04.202, and RCW 31.04.205, and is subject to the provisions of chapter 34.05 RCW (The
6 Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in
7 the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING
8 accompanying this Statement of Charges.

9 Dated this 6th day of May, 2016.

10 /s/ _____
11 CHARLES E. CLARK
12 Director
13 Division of Consumer Services
14 Department of Financial Institutions

15 Presented by:

16 /s/ _____
17 ROBERT E. JONES
18 Financial Legal Examiner

19 Approved by:

20 /s/ _____
21 STEVEN C. SHERMAN
22 Enforcement Chief