



STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

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

MATTHEW H. SMITH,
Loan Originator,

Respondent.

NO. C-07-026-09-FO03

FINAL ORDER

I. DIRECTOR'S CONSIDERATION

A. Default. This matter has come before the Director of the Department of Financial Institutions of the State of Washington (Director), through his designee, Consumer Services Division Director Deborah Bortner, pursuant to RCW 34.05.440(2). On June 29, 2007, the Director, through Consumer Services Division Director Deborah Bortner, entered a Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry and Collect Investigation Fee (Statement of Charges). A copy of the Statement of Charges is attached and incorporated into this order by this reference. The Statement of Charges was accompanied by a cover letter dated July 9, 2007, a Notice of Opportunity to Defend and Opportunity for Hearing, and a blank Application for Adjudicative Hearing for Matthew H. Smith. The Department served the Statement of Charges, cover letter dated July 9, 2007, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for Adjudicative Hearing for Matthew H. Smith on Respondent on July 9, 2007, by First-Class mail and Federal Express overnight delivery.

1 On January 16, 2008, Respondent filed an Application for Adjudicative Hearing.¹ On April
2 21, 2008, the Department made a request to the Office of Administrative Hearings (OAH) to assign an
3 Administrative Law Judge (ALJ) to schedule and conduct a hearing on the Statement of Charges. On
4 July 17, 2008, OAH issued a Notice of Pre-Hearing Conference by Telephone scheduling a prehearing
5 conference on Wednesday, August 6, 2008, at 8:30 a.m. On August 6, 2008, the Respondent and a
6 representative for the Department called OAH to attend a telephonic prehearing conference, but the
7 ALJ was not notified that the Respondent called and found Respondent in default. On August 11,
8 2008, the ALJ learned that the Respondent had timely called in for the hearing and the ALJ vacated the
9 default finding. On March 20, 2009, OAH issued a Notice of Assignment of Administrative Law
10 Judge assigning ALJ Gail G. Maurer to Respondent's appeal. The Notice was accompanied by an
11 Order of Continuance of Prehearing Conference resetting the prehearing conference for April 17, 2009,
12 at 2:30 p.m..

14 On April 17, 2009, the Respondent and a representative for the Department attended the
15 telephonic prehearing conference. On April 30, 2009, ALJ Maurer issued a Prehearing Conference
16 Order scheduling a hearing on July 30, 2009, at 9:00 a.m. On July 30, 2009, the hearing was convened
17 by ALJ Maurer at 9:00 a.m. Respondent failed to appear and the Department moved for an order of
18 default based on Respondent's failure to appear. ALJ Maurer found Respondent in default, and on
19 August 4, 2009, issued an Order of Default and Dismissal (Order of Default) finding the Respondent
20 in default and dismissing the Respondent's appeal of the Statement of Charges. ALJ Maurer sent the
21 Order of Default to the address in Respondent's Application for Adjudicative Hearing on the same
22 date.
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25 ¹ Due to difficulties locating Respondent, the Statement of Charges and Application for Adjudicative Hearing were delivered to Respondent on December 28, 2007.

1 Pursuant to RCW 34.05.440(3), Respondent had seven days from the date of service of the
2 Order of Default to file a written motion with OAH requesting that the Order of Default be vacated,
3 and stating the grounds relied upon. Respondent did not make a request to vacate during the statutory
4 period. Pursuant to RCW 34.05.464 and WAC 10-08-211, Respondent had 20 days from the date of
5 service of the Order of Default to file a Petition for Review of the Order of Default with the Director.
6 Respondent did not file a Petition for Review during the statutory period.

7 B. Record Presented. The record presented to the Director for review and for entry of a
8 final decision included the following:
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- 10 1. Statement of Charges, cover letter dated July 9, 2007, and Notice of Opportunity to
11 Defend and Opportunity for Hearing, with documentation of service;
- 12 2. Application for Adjudicative Hearing for Matthew H. Smith;
- 13 3. Request to OAH for Assignment of Administrative Law Judge;
- 14 4. Notice of Pre-Hearing Conference by Telephone dated July 17, 2008, with
15 documentation of service;
- 16 5. Notice of Assignment of Administrative Law Judge dated March 20, 2009, with
17 documentation of service;
- 18 6. Order of Continuance of Prehearing Conference dated March 20, 2009, with
19 documentation of service;
- 20 7. PreHearing Conference Order and Notice of Hearing dated April 30, 2009, with
21 documentation of service;
- 22 8. Order of Default and Dismissal dated August 4, 2009, with documentation of service.

23 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.440(2), the
24 Director hereby adopts the Statement of Charges, which is attached hereto.
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1 II. FINAL ORDER

2 Based upon the foregoing, and the Director having considered the record and being
3 otherwise fully advised, NOW, THEREFORE:

4 A. IT IS HEREBY ORDERED, that:

- 5 1. Respondent Matthew H. Smith is prohibited from participation in the conduct of the
6 affairs of any mortgage broker licensed by the Department or any mortgage broker
7 exempt from licensing under Washington law, in any manner, for a period of five
8 years from the date of this Final Order; and
2. Respondent Matthew H. Smith shall pay an investigation fee of \$382.24.

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

20 C. Stay of Order. The Director has determined not to consider a Petition to Stay the
21 effectiveness of this order. Any such requests should be made in connection with a Petition for Judicial
22 Review made under chapter 34.05 RCW and RCW 34.05.550.
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1 D. Judicial Review. Respondent has the right to petition the superior court for judicial
2 review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing
3 a Petition for Judicial Review, see RCW 34.05.510 and sections following.

4 E. Non-compliance with Order. If you do not comply with the financial terms of this order
5 within 30 days of service of this Final Order, the Department may seek its enforcement by the Office of
6 Attorney General to include the collection of the fee imposed herein and lawful attorney fees.

7 F. Service. For purposes of filing a Petition for Reconsideration or a Petition for
8 Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service
9 attached hereto.
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11 DATED this 15th day of December 2009.



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STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS


SCOTT JARVIS
DIRECTOR

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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:

MATTHEW H. SMITH,
Loan Originator,

Respondent.

NO. C-07-026-07-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO PROHIBIT FROM INDUSTRY
AND COLLECT INVESTIGATION FEE

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INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act)¹. After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of the date of this document, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

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I. FACTUAL ALLEGATIONS

1.1 Respondent. Respondent Matthew H. Smith (Respondent Smith) was employed as a loan originator by 1st Line Mortgage LLC, a licensed mortgage broker, at all times relevant to this Statement of Charges.

Respondent Smith was also a licensed Real Estate Salesperson at all times relevant to this Statement of Charges. Respondent Smith has not applied for a Loan Originator license.

1.2 Prohibited Acts. On or about September 14, 2006, Respondent Smith was acting as a Real Estate Sales Person representing potential buyers of certain real estate in King County, Washington. Respondent Smith represented to the real estate agent for the sellers that he would be "brokering the financing as well" in his capacity as an "Executive Loan Officer" for 1st Line Mortgage. Respondent Smith drafted a Purchase and

¹ RCW 19.146 (2003)

1 Sales Agreement on behalf of the buyers and submitted it to the real estate agent for the Sellers. The purchase
2 price stated on the Purchase and Sale Agreement was \$435,000, but the list price at the time was only \$415,000.

3 The Purchase and Sales Agreement included a document entitled "Addendum/Amendment," also dated
4 September 14, 2006, proposing that the seller agree to pay the buyer the sum of \$50,000 at closing for
5 "upgrades." This document states in large print, "NOT PART OF PURCHASE & SALES AGREEMENT."

6 The Purchase and Sales Agreement was faxed to the agent for the sellers on the same date,
7 accompanied by a letter drafted by Respondent that stated in relevant part, "[The buyers] would like to get the
8 funds to complete the commercial conversion from your seller, but we must do so outside the P&S Agreement,
9 hence the second addendum." The faxed Purchase and Sales Agreement was also accompanied by a fax cover
10 from Respondent that stated in relevant part, "\$462,500 final \$\$."

11 Respondent Smith told the sales agent for the seller that the \$50,000 payment outside of closing needed
12 to be done secretly and should not be mentioned to anyone. This alarmed the seller's agent, who reported the
13 matter to her supervisor, Wayne Snoey. Mr. Snoey confronted Respondent Smith and asked for the name of the
14 lender who had agreed to fund a loan that had \$50,000 going back to the buyer. Respondent Smith did not
15 provide the name of a lender, but claimed it was the type of transaction he did "all the time."

16 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
17 Respondent Smith continues to date.

18 II. GROUNDS FOR ENTRY OF ORDER

19 **2.1 Definition of Mortgage Broker.** Pursuant to RCW 19.146.010(12) and WAC 208-660-010(29),
20 "Mortgage Broker" means any person who, for compensation or gain, or in the expectation of compensation or
21 gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential
22 mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a
23 person in obtaining or applying to obtain a residential mortgage loan.

24 **2.2 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent Smith is in
25 apparent violation of RCW 19.146.0201(1) and (2) by directly or indirectly employing a scheme, device, or

1 artifice to defraud or mislead borrowers or lenders or any person, and by engaging in an unfair or deceptive
2 practice toward any person.

3 III. AUTHORITY TO IMPOSE SANCTIONS

4 **3.1 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(2)(e)(i), (ii), (iii), and (iv),
5 the Director may issue orders removing from office or prohibiting from participation in the conduct of the
6 affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any
7 licensed mortgage broker or any person subject to licensing under the Act for any violation of RCW
8 19.146.0201(1) through (9).

9 **3.2 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-060(4) and
10 WAC 208-660-061, upon completion of any investigation of the books and records of a licensee or other person
11 subject to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover
12 the cost of the investigation. The investigation charge will be calculated at the rate of forty-seven dollars and
13 seventy-eight cents (\$47.78) per hour that each staff person devoted to the investigation.

14 IV. NOTICE OF INTENTION TO ENTER ORDER

15 Respondent s' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth
16 in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis
17 for the entry of an Order under RCW 19.146.220, RCW 19.146.221, and RCW 19.146.223. Therefore, it is the
18 Director's intention to ORDER that:

- 19 **4.1** Respondent Matthew H. Smith be prohibited from participating in the conduct of the affairs of any
20 mortgage broker licensed by the Department or any mortgage broker exempt from Washington law under
RCW 19.146.020(1)(d) or (f), in any capacity, for a period of five (5) years; and
- 21 **4.2** Respondent Matthew H. Smith pay an investigation fee in the amount of \$382.24, calculated at \$47.78 per
22 hour for the eight (8) staff hours devoted to the investigation.
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V. AUTHORITY AND PROCEDURE

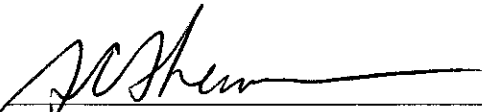
This Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223, and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent 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.

Dated this 29th day of June, 2007.



DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:



STEVEN C. SHERMAN
Financial Legal Examiner



Approved by:



JAMES R. BRUSSELBACK
Enforcement Chief