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

IN THE MATTER OF INVESTIGATING
the Loan Originator License Application under the
Mortgage Broker Practices Act of Washington by:

MICHAEL DUANE SMITH,
Respondent.

NO. C-07-180-08-FO01

FINAL ORDER

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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) pursuant to RCW 34.05.440(2). On December 17, 2007, the Director, through Consumer Services Division Director Deborah Bortner, entered a Statement of Charges and Notice of Intention to Enter an Order to Deny License Application (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 December 17, 2007, a Notice of Opportunity to Defend and Opportunity for Hearing, and a blank Application for Adjudicative Hearing. The Department served the Statement of Charges, cover letter dated December 17, 2007, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for Adjudicative Hearing on Respondent on December 17, 2007 by first class mail and Federal Express overnight delivery.

On January 7, 2008, Respondent filed an Application for Adjudicative Hearing. On January 8, 2008, the Department made a request to the Office of Administrative Hearings (OAH) to assign an Administrative Law Judge (ALJ) to schedule and conduct a hearing on the Statement of Charges. On January 24, 2008, OAH issued a Notice of Pre-Hearing Conference and assigned ALJ James Skeel

1 (ALJ Skeel) to preside over prehearing and hearing proceedings and issue an Initial Decision. The
2 Notice of Pre-Hearing Conference scheduled a pre-hearing telephone conference call for Tuesday,
3 February 12, 2007 at 11:00 a.m. That Order contained the following instruction to the parties: "**Your**
4 **pre-hearing will be conducted by telephone. To register your appearance you must call the**
5 **Office of Administrative Hearings ten (10) minutes before the scheduled hearing time...**" That
6 Order also noted "A party who fails to attend or participate in the hearing or other stage of the
7 adjudicative proceeding, including a pre-hearing conference, may be held in default in accordance with
8 RCW 34.05.440 and .434."

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10 On February 14, 2008, representatives for the Department and Respondent's counsel attended a
11 telephonic prehearing conference. On February 20, 2008, ALJ Skeel issued a Pre-Hearing Conference
12 Order scheduling a deadline for Wednesday, March 26, 2008 for the Department to file a motion for
13 summary judgment and a deadline of Wednesday, April 4, 2008 for Respondent to file a response to
14 the motion.

15 On March 10, 2008, Respondent filed with the Office of Administrative Hearings a Notice of
16 Withdrawal of Appeal withdrawing his appeal and request for hearing. On April 2, 2008, ALJ Skeel
17 issued an Order of Dismissal dismissing Respondent's appeal.

18 B. Record Presented. The record presented to the Director for his review and for entry of
19 a final decision included the following:

- 20 1. Statement of Charges, cover letter dated December 17, 2007, and Notice of
21 Opportunity to Defend and Opportunity for Hearing, with documentation of service;
- 22 2. Application for Adjudicative Hearing;
- 23 3. Request to OAH for Assignment of Administrative Law Judge;
- 24

- 1 4. Notice of Pre-Hearing Conference dated January 24, 2008, with documentation of
2 service;
- 3 5. Pre-Hearing Conference Order dated February 20, 2008, with documentation of
4 service;
- 5 6. Notice of Withdrawal of Appeal stamped March 10, 2008, with documentation of
6 service;
- 7 7. Order of Dismissal dated April 2, 2008, with documentation of service.

8 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.440(2), the
9 Director hereby adopts the Statement of Charges, which is attached hereto.

10 II. FINAL ORDER

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

13 A. IT IS HEREBY ORDERED, That: Respondent Micheal Duane Smith's application for
14 a loan originator license is denied.

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

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

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

4 D. Judicial Review. Respondent has the right to petition the superior court for judicial
5 review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing
6 a Petition for Judicial Review, see RCW 34.05.510 and sections following.

7 E. 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 18th day of June, 2008.



12 STATE OF WASHINGTON
13 DEPARTMENT OF FINANCIAL INSTITUTIONS

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15 SCOTT JARVIS
16 DIRECTOR
17 DEPARTMENT OF FINANCIAL INSTITUTIONS

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

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IN THE MATTER OF INVESTIGATING
the Loan Originator License Application under the
Mortgage Broker Practices Act of Washington by:

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MICHAEL DUANE SMITH,

Respondent.

NO. C-07-180-07-SC01

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**STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO DENY LICENSE APPLICATION**

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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 19.146.310, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondent Michael Duane Smith (Respondent Smith) submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a loan originator license under American Freedom Group, Inc., a mortgage broker licensed under the Act. The on-line application was received by the Department on or about December 10, 2006.

1.2 Prior Criminal Acts. On May 29, 2007, Respondent Smith was found guilty of three counts of Securities Fraud in violation of 15 U.S.C. §§ 77q(a) & 77x and 18 U.S.C. §2, a felony.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Requirement of No Prior Convictions. Based on the Factual Allegations set forth in Section I above, Respondent Smith fails to meet the requirements of RCW 19.146.310(1)(d) and WAC 208-660-350(2)(c) by

¹ RCW 19.146 (Amended 2006; Effective January 1, 2007)

1 having been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony within
2 seven years of the filing of the present application.

3 **2.2 Requirement to Demonstrate Character and General Fitness.** Based on the Factual Allegations set
4 forth in Section I above, Respondent Smith fails to meet the requirements of RCW 19.146.310(1)(g) and WAC
5 208-660-350(2)(a) by failing to demonstrate character and general fitness such as to command the confidence of
6 the community and to warrant a belief that the business will be operated honestly and fairly within the purposes
7 of the Act.

8 **III. AUTHORITY TO IMPOSE SANCTIONS**

9 **3.1 Authority to Deny Application for Loan Originator License.** Pursuant to RCW 19.146.220(1), the
10 Director may deny licenses to loan originators. Pursuant to RCW 19.146.310(2) and WAC 208-660-350(7), the
11 Director shall not issue a loan originator license if the conditions of RCW 19.146.310(1) have not been met by
12 the applicant, and shall notify the loan originator applicant and any mortgage brokers listed on the application
13 of the denial.

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, RCW 19.146.223 and RCW 19.146.310.
18 Therefore, it is the Director's intention to ORDER that:

19 **4.1** Respondent Michael Duane Smith's application for a loan originator license be denied.

20 **V. AUTHORITY AND PROCEDURE**

21 This Statement of Charges and Notice of Intention to Enter an Order to Deny License Application
22 (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW
23 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative
24 Procedure Act). Respondent may make a written request for a hearing as set forth in the NOTICE OF
25

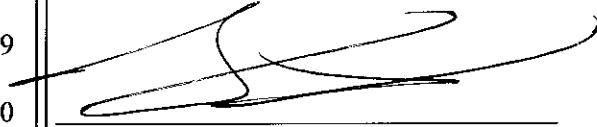
1 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of
2 Charges.

3 Dated this 17th day of December, 2007.



DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

8 Presented by:



FATIMA BATIE
Financial Legal Examiner Supervisor



12 Approved by:



JAMES R. BRUSSELBACK
Enforcement Chief