



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

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

THOMAS ANDREW HESTMARK,
Respondent.

OAH Docket No. 2007-DFI-00631

No. C-07-192-08-FO01

FINAL DECISION & ORDER
CONFIRMING GRANT OF SUMMARY
JUDGMENT BY ADMINISTRATIVE
LAW JUDGE

THIS MATTER has come before the Director ("hereinafter, "Director") of the Department of Financial Institutions (hereinafter, "Department") in the above-enumerated administrative action pursuant to Initial Decision and Order on Summary Judgment (hereinafter, collectively, "Initial Order") based upon an Amended Statement of Charges and Notice of Intention to Enter an Order to Deny License Application and Prohibit from Industry (hereinafter, "Amended Statement of Charges") issued by the Division of Consumer Services (hereinafter, "Division") on or about October 10, 2007, under the authority of the Mortgage Broker Practices Act, Ch. 19.146 RCW (hereinafter, "MBPA").

The Respondent, THOMAS ANDREW HESTMARK (hereinafter, "Respondent") timely requested an Administrative Hearing to contest the Statement of Charges, and this matter was assigned to the Office of Administrative Hearings (hereinafter, "OAH"), which designated Administrative Law Judge Gina L. Hale (hereinafter, "Administrative Law Judge") to hear the case. The Division made a Motion for Summary Judgment (hereinafter, "Summary Judgment Motion"), by and through its counsel, Assistant Attorney General, Charles Clark (hereinafter, "Division Counsel"). Respondent filed a Defendant's Motion to Oppose Grant of Summary Judgment (hereinafter, "Summary Judgment Response") by and through his legal

1 representative, Alexander Hamalian (hereinafter, "Respondent's Counsel"). Then, on June 5,
2 2008, the Administrative Law Judge issued an Initial Order granting the Summary Judgment
3 Order. The Initial Order contained Findings of Fact (hereinafter, "FOF") and Conclusions of
4 Law (hereinafter, "COL").

5 More than twenty (20) days has elapsed since the entry and service of the Initial Order.
6 Respondent has not filed any petition for review of the Initial Order.

7 On or about October 8, 2008, the Division presented this matter to the Director for entry
8 of a final decision and order. However, the proposed final decision and order were in the
9 nature of a *default or uncontested* final order – i.e., in a form and style that is properly reserved
10 for those cases which are either (1) uncontested from inception or (2) come before the Director
11 as a result of an applicant's default.

12 This case *was* contested by Respondent. Respondent *did* respond to the Summary
13 Judgment Motion. Respondent *did not* default. Respondent simply did not file a petition for
14 review of the Initial Order. Division's proposed final decision and order are inappropriate in
15 form and substance, because they do not convey to the parties or to a superior court (in the
16 event of judicial review) the Director's required deliberation, even in circumstances such as
17 these, of the sufficiency and propriety of the Administrative Law Judge's grant of summary
18 judgment.
19

20 Accordingly, the Director subsequently received and has now considered the entire
21 OAH Record. This Final Decision and Order are based upon a consideration of the entire OAH
22 Record, including, without limitation, the following:
23

- 24 1. License application dated December 19, 2006 (hereinafter, "Application");
- 25 2. Amended Statement of Charges;
- 26 3. Application for Adjudicative Hearing;
- 27 4. Summary Judgment Motion of Division Counsel;
- 28 5. Declaration of Robert E. Jones (hereinafter, "Jones Declaration");
- 29 6. Summary Judgment Response of Respondent's Counsel; and
- 30 7. The Initial Order.

31 This record is hereinafter referred to collectively as "Record on Review."
32
33
34

1
2 1.0 Summary of the Case

3 This case concerns whether Respondent is automatically disqualified from obtaining a
4 Loan Originator License (hereinafter, "License") and prohibited from participation in the
5 affairs of a mortgage broker until August 1, 2017, by reason of: (1) Failure to demonstrate the
6 character and general fitness required to be licensed; (2) having been convicted of a gross
7 misdemeanor involving dishonesty or financial misconduct within 7 years of the date of
8 Application; and (3) having failed to provide accurate information in his Application. A
9 prospective licensee is automatically disqualified from obtaining a License if convicted of any
10 type of felony or a gross misdemeanor involving dishonesty or financial misconduct within 7
11 years of the date of application for a loan originator license.¹ In addition, the MBPA also
12 authorizes the Division to seek a License ban of additional years (in this case until December
13 28, 2013) for either making false statements or willfully omitting information in a License
14 application in violation of RCW 19.146.0201(8).²

15
16 2.0 Preliminary Considerations

17 2.1 Standards for Summary Judgment in Administrative Actions. The Director
18 takes note preliminarily of the following standards which are to be applied to motions for
19 summary judgment in an administrative action under the Administrative Procedures Act,
20 Chapter 34.05 RCW (hereinafter, "APA") :

21
22 2.1.1 Standards for Granting Summary Judgment. The Department has
23 adopted the Model Rules of Procedure, Chapter 10-08 WAC, except to the extent of any
24 conflict with the Department's Rules of Procedure.³ WAC 10-08-135 sets forth the standards
25 to be followed by the Department and the Administrative Law Judge, as its agent, when
26 considering the Summary Judgment Motion and the Summary Judgment Response, and
27 declares that "[a] motion for summary judgment may be granted and an order issued [only] if
28 the written record shows that there is no genuine issue as to any material fact and that the
29

30
31 ¹ RCW 19.146.310(1) (d and (2) and WAC 208-660-350(2)(c).

32 ² See RCW 19.146.220(5)(a).

33 ³ WAC 208-08-020(1) declares: "The department adopts the model rules of procedure as set forth in WAC 10-08-035 through 10-08-230. If
34 there is a conflict between the model rules and this chapter, the rules in this chapter shall govern. Wherever the term 'agency' appears in the
model rules it means the department of financial institutions."

1 moving party is entitled to judgment as a matter of law.” In evaluating the application of this
2 standard, the Director may rely on applicable law from sources other than WAC 10-08-135
3 itself and must be respectful of the constitutional rights of respondents.⁴ To that end, the
4 Director is required to weigh on review all pleadings, evidence and argument in a light most
5 favorable to the non-moving party.⁵ If there is any inference of a triable issue of fact, then
6 summary judgment is inappropriate.⁶ Litigants are entitled to a dispositive hearing on all issues
7 of fact and law.⁷ These principles apply equally to the Administrative Law Judge and to the
8 Director evaluating the Initial Order.⁸

9
10 2.2 Proper Consideration by Director Absent Petition for Review. Respondent did
11 not file a petition for review contesting the Initial Order. However, even when a party has *not*
12 filed a petition for review, the Director still has the authority and duty, prior to entering a Final
13 Decision and Order, to consider whether any part of the Initial Order is *not* supported by the
14 record⁹ and whether confirmation of the Initial Order, without modification, would be an error
15 of law. Indeed, with regard to the COL as contained in the Initial Order, the Director is
16 obliged, in the manner of a reviewing court, to consider the statutes and implementing
17 regulations of the Division under the error of law standard, which permits the Director to
18 substitute his judgment for that of the Amended Statement of Charges and the Administrative
19 Law Judge’s Initial Order.¹⁰

20
21 2.2.1 Consideration of Length of License Ban. It is apparent from the Initial
22 Order that the Administrative Law Judge considered the question of whether Respondent
23 negligently made a false statement or knowingly and willfully made an omission of material
24

25 ⁴ WAC 10-08-220 declares: “Nothing in chapter 10-08 WAC is intended to diminish the constitutional rights of any person or to limit or
26 modify additional requirements imposed by statute, including the Administrative Procedure Act.”

27 ⁵ *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998).

28 ⁶ *Davis v. W. One Auto. Group*, 140 Wn. App. 449, 456 (2007).

29 ⁷ *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300-01, 45 P.3d 1068 (2002), citing *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124
30 (2000).

31 ⁸ *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

32 ⁹ See RCW 34.05.464(4); see also *Northwest Steelhead v. Washington State Department of Fisheries*, 78 Wn. App. 778, 896 P.2d 1292 (1995);
33 see also *Towle v. Department of Fish and Wildlife*, 94 Wn.App. 196, 971 P.2d 591 (1999).

34 ¹⁰ See *Aponte v. Dep’t of Soc. & Health Servs.*, 92 Wn. App. 604, 616-17, 965 P.2d 626 (1998), *review denied*, 137 Wn.2d 1028 (1999); cited
in *Nationscapital* at p. 737.

1 fact in his application¹¹ and found that there was no evidence or inference that raised a material
2 issue of fact disputing the Division's contention in this regard. While the Director is respectful
3 of and agrees with the Administrative Law Judge's finding in this regard,¹² the Administrative
4 Law Judge lacks the authority to decide the appropriateness in length of the License ban sought
5 by the Division. If such a length of License ban is authorized by the MBPA (which it is), the
6 Administrative Law Judge may not question its imposition – provided, of course, that the
7 Respondent has committed a violation giving rise to such a ban. Only the Director, who must
8 issue a final administrative order, has the authority to modify a penalty, fine or license ban
9 properly sought by the Division.
10

11 **3.0 Director's Consideration of FOF and COL.** After due consideration of the entire record
12 on review and in a light most favorable to Respondent, the Director is of the decided view that
13 the Initial Order is appropriate in its entirety, except for what appears to be an inadvertent
14 typographical error contained in COL 6 at p. 5, of the Initial Order, as follows:

15 “Mr. Hestmark violated RCW 19.146.0201(5)(8) when he negligently or
16 intentionally withheld information about his criminal history on his application.
17 He is therefore prohibited from participating in the conduct of the affairs of any
18 licensed mortgage broker. **RCW 19.146.220 95)(a).**”

19 COL 6 at p. 5 [sic], of the Initial Order is correct and affirmed by the Director, except for the
20 incorrect citation of the statute underlined in bold above. The statute should read “RCW
21 19.146.220(5)(a).”

22 **4.0 Findings of Fact.** Now, therefore, the Director re-affirms FOF 1 through FOF 11,
23 inclusive, at pages 2-4 [sic] of the Initial Order.

24 **5.0 Conclusions of Law.** Now, therefore, the Director re-affirms: COL 1 through COL 5,
25 inclusive, at pages 4-5 [sic] of the Initial Order; COL 6 at p. 5 [sic] of the Initial Order, as
26 modified above in *Section 3.0* of this Final Decision and Order; and COL 7 at p. 5 [sic].

27 **6.0 Final Order.** Having made Findings of Fact and Conclusions of Law as set forth above,
28 **IT IS HEREBY ORDERED AS FOLLOWS:**

29 **6.1 Denial of License.** The application of Respondent, THOMAS ANDREW
30 HESTMARK, for a Loan Originator License is denied.
31

32
33 ¹¹ See Initial Order, FOF 10 at p. 3 [sic]; COL 6 at pp. 5 [sic].

34 ¹² COL 7 at p. 5 [sic], of the Initial Order.

1 6.2 Prohibition. Respondent THOMAS ANDREW HESTMARK is prohibited from
2 participating in the conduct of the affairs of any mortgage broker subject to licensure by the
3 Director, in any manner, through December 28, 2013.

4 6.3 Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to
5 file a Petition for Reconsideration stating the specific grounds upon which relief is requested.
6 The Petition must be filed in the Office of the Director of the Department of Financial
7 Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail
8 at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this
9 Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness
10 of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in
11 this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days
12 from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the
13 parties with a written notice specifying the date by which it will act on a petition.
14

15 6.4 Stay of Order. The Director has determined not to consider a Petition to
16 Stay the effectiveness of this order. Any such requests should be made in connection with a
17 Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

18 6.5 Judicial Review. Respondent has the right to petition the superior court for
19 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the
20 requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

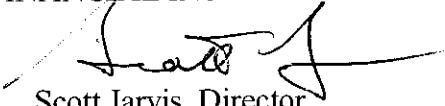
21 6.6 Service. For purposes of filing a Petition for Reconsideration or a Petition
22 for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of
23 service attached hereto.
24

25 6.7 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative
26 Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective
27 immediately upon deposit in the United States Mail.

28 Dated at Tumwater, Washington, on this ~~12~~th day of December, 2008.
29

30 WASHINGTON STATE DEPARTMENT
31 OF FINANCIAL INSTITUTIONS

32 By:


33 
34 Scott Jarvis, Director

1 **NOTICE TO THE PARTIES**

2 In accordance with RCW 34.05.470 and WAC 10-08-215, any Petition for
3 Reconsideration of the FINAL DECISION & ORDER CONFIRMING GRANT OF
4 SUMMARY JUDGMENT BY ADMINISTRATIVE LAW JUDGE must be filed with the
5 Director within ten (10) days of service of such FINAL DECISION & ORDER. It should be
6 noted that Petitions for Reconsideration do not stay the effectiveness of the FINAL DECISION
7 & ORDER. Judicial Review of the FINAL DECISION & ORDER is available to a party
8 according to provisions set out in the Washington Administrative Procedure Act, RCW
9 34.05.570.

10 This is to certify that the FINAL DECISION AND ORDER has been served upon the
11 following parties on December 18, 2008 by depositing a copy of
12 same in the United States mail, postage prepaid.

13 WASHINGTON STATE DEPARTMENT
14 OF FINANCIAL INSTITUTIONS

15 By: 

16 Susan Putzier

17 Executive Assistant to the Director

18 **Mailed to the following:**

19 Thomas Hestmark
20 c/o 714 SW 20th Place
21 Portland, OR 97205

22 Charles Clark, AAG
23 Office of the Attorney General
24 PO Box 40100
25 Olympia WA 98504-0100

26 Alex Hamalian, Esq.
27 714 SW 20th Place
28 Portland, OR 97205

29 James R. Brusselback
30 Chief of Enforcement
31 Division of Consumer Services
32 Department of Financial Institutions
33 P.O. Box 41200
34 Olympia, WA 98504-1200

1
2
3
4
5
6
7
8
9

**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:

THOMAS ANDREW HESTMARK,

Respondent.

NO. C-07-192-07-SC02

AMENDED STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO DENY LICENSE APPLICATION
AND PROHIBIT FROM INDUSTRY

10
11
12
13
14
15
16

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:

17
18
19
20
21
22
23
24
25

I. FACTUAL ALLEGATIONS

1.1 Respondent Thomas Andrew Hestmark (Respondent Hestmark) submitted an application to the
Department of Financial Institutions of the State of Washington (Department) for a loan originator license under
Mortgage Express LLC, a mortgage broker licensed under the Act. The on-line application was received by the
Department on or about December 19, 2006.

1.2 Prior Criminal Acts. On June 22, 2005, Respondent Hestmark was indicted, in Washington County,
Oregon, on one count of Theft of Services, a felony, in violation of ORS 164.125(5)(d) and one count of
Identity Theft, a felony, in violation of ORS 165.800. On November 17, 2005, in Washington County, Oregon,
in Case No. C051947CR, Respondent Hestmark was convicted of Theft of Services, a felony, in violation of
ORS 164.125(5)(d). However, pursuant to ORS 164.570, a felony may be treated as a Class A Misdemeanor at

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

1 the election of the district attorney, and in this case was. In Oregon, Class A misdemeanors are punishable by
2 up to 1 year imprisonment. Pursuant to RCW 9A.20.010(2)(a) and (b) a misdemeanor is any crime punishable
3 by a fine of not more than one thousand dollars, or by imprisonment in a county jail for not more than ninety
4 days, or by both such fine and imprisonment. An Oregon Class A misdemeanor is equivalent to a Washington
5 gross misdemeanor in terms of sentence.

6 **1.3 Responses to Application Questions.** The "Criminal Disclosure" section of the loan originator license
7 application consists of eight questions, and includes the following instruction:

8 "If the answer to any of the following is "YES", provide complete details of all events or proceedings"
9 Respondent Hestmark answered "no" to the following questions on the "Criminal Disclosure" section of his
10 loan originator license application:

- 11 • 1- Have you ever been convicted of or plead guilty or nolo contendere ("no contest") in a
12 domestic, foreign, or military court to misdemeanor involving: financial services or a
13 financial services-related business or any fraud, false statements or omissions, theft or any
14 wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a
15 conspiracy to commit any of these offenses?
- 16 • 2- Been charged with any felony?

17 Respondent Hestmark was obligated by statute to answer questions on the loan originator license application
18 truthfully and to provide the Department with complete details of all events or proceedings.

19 II. GROUNDS FOR ENTRY OF ORDER

20 **2.1 Requirement of No Prior Convictions.** Based on the Factual Allegations set forth in Section I above,
21 Respondent Hestmark fails to meet the requirements of RCW 19.146.310(1)(d) and WAC 208-660-350(2)(c)
22 by having been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony
23 within seven years of the filing of the present application.

24 **2.2 Prohibited Practices.** Based on the Factual Allegations set forth in Section I above, Respondent
25 Hestmark is in apparent violation of RCW 19.146.0201(8) and WAC 208-660-500(3)(i) for negligently making

1 any false statement or willfully making any omission of material fact in connection with any application or any
2 information filed by a licensee in connection with any application, examination or investigation conducted by
3 the Department.

4 **2.3 Requirement to Provide Information on License Application.** Based on the Factual Allegations set
5 forth in Section I above, Respondent Hestmark fails to meet the requirements of RCW 19.146.300(1) and (2)
6 and RCW 19.146.310(1)(b) by failing to provide an accurate and complete license application in the form
7 prescribed by the Director.

8 **2.4 Requirement to Demonstrate Character and General Fitness.** Based on the Factual Allegations set
9 forth in Section I above, Respondent Hestmark fails to meet the requirements of RCW 19.146.310(1)(g) and
10 WAC 208-660-350(2)(a) by failing to demonstrate character and general fitness such as to command the
11 confidence of the community and to warrant a belief that the business will be operated honestly and fairly
12 within the purposes of the Act.

13 **III. AUTHORITY TO IMPOSE SANCTIONS**

14 **3.1 Authority to Deny Application for Loan Originator License.** Pursuant to RCW 19.146.220(1), the
15 Director may deny licenses to loan originators. Pursuant to RCW 19.146.310(2) and WAC 208-660-350(7), the
16 Director shall not issue a loan originator license if the conditions of RCW 19.146.310(1) have not been met by
17 the applicant, and shall notify the loan originator applicant and any mortgage brokers listed on the application
18 of the denial.

19 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 19.146.220(5)(a), the Director may issue
20 orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed
21 mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker
22 or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9).

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

24 Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth
25 in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis

1 for the entry of an Order under RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.310.

2 Therefore, it is the Director's intention to ORDER that:

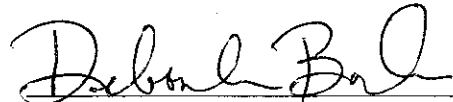
3 **4.1** Respondent Thomas Andrew Hestmark's application for a loan originator license be denied.

4 **4.2** Respondent Thomas Andrew Hestmark be prohibited from participation in the conduct of the affairs of
5 any mortgage broker subject to licensure by the Director, in any manner, through December 19, 2013.

6 **V. AUTHORITY AND PROCEDURE**

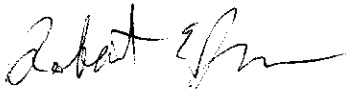
7 This Statement of Charges and Notice of Intention to Enter an Order to Deny License Application and
8 Prohibit from Industry (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220,
9 RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05
10 RCW (The Administrative Procedure Act). Respondent may make a written request for a hearing as set forth in
11 the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
12 Statement of Charges.

13 Dated this 10th day of October, 2007.

14 

15 DEBORAH BORTNER
16 Director
17 Division of Consumer Services
18 Department of Financial Institutions

19 Presented by:

20 

21 ROBERT E. JONES
22 Financial Legal Examiner

23 Approved by:

24 

25 FATIMA BATIE
Financial Legal Examiner Supervisor



1
2
3
4
5
6
7
8
9

**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:

THOMAS ANDREW HESTMARK,

Respondent.

NO. C-07-192-07-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO DENY LICENSE APPLICATION
AND PROHIBIT FROM INDUSTRY

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 Thomas Andrew Hestmark (Respondent Hestmark) submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a loan originator license under Mortgage Express LLC, a mortgage broker licensed under the Act. The on-line application was received by the Department on or about December 19, 2006.

1.2 Prior Criminal Acts. On June 22, 2005, Respondent Hestmark was indicted, in Washington County, Oregon, on one count of Theft of Services, a felony, in violation of ORS 164.125(5) (d) and one count of Identity Theft, a felony, in violation of ORS 165.800. On November 17, 2005, in Washington County, Oregon, in Case No. C051947CR, Respondent Hestmark was convicted of Theft of Services, a felony, in violation of ORS 164.125(5) (d).

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

1 **1.3 Responses to Application Questions.** The “Criminal Disclosure” section of the loan originator license
2 application consists of eight questions, and includes the following instruction:

3 “If the answer to any of the following is “YES”, provide complete details of all events or proceedings”
4 Respondent Hestmark answered “no” to the following questions on the “Criminal Disclosure” section of his
5 loan originator license application:

- 6 • 1-Have you ever been convicted of or plead guilty or nolo contendere (“no contest”) in a
7 domestic, foreign, or military court to any felony?
- 8 • 2-Been charged with any felony?

9 Respondent Hestmark was obligated by statute to answer questions on the loan originator license application
10 truthfully and to provide the Department with complete details of all events or proceedings.

11 **II. GROUNDS FOR ENTRY OF ORDER**

12 **2.1 Requirement of No Prior Convictions.** Based on the Factual Allegations set forth in Section I above,
13 Respondent Hestmark fails to meet the requirements of RCW 19.146.310(1)(d) and WAC 208-660-350(2)(c)
14 by having been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony
15 within seven years of the filing of the present application.

16 **2.2 Prohibited Practices.** Based on the Factual Allegations set forth in Section I above, Respondent
17 Hestmark is in apparent violation of RCW 19.146.0201(8) and WAC 208-660-500(3)(i) for negligently making
18 any false statement or willfully making any omission of material fact in connection with any application or any
19 information filed by a licensee in connection with any application, examination or investigation conducted by
20 the Department.

21 **2.3 Requirement to Provide Information on License Application.** Based on the Factual Allegations set
22 forth in Section I above, Respondent Hestmark fails to meet the requirements of RCW 19.146.300(1) and (2)
23 and RCW 19.146.310(1)(b) by failing to provide an accurate and complete license application in the form
24 prescribed by the Director.

25

1 **2.4 Requirement to Demonstrate Character and General Fitness.** Based on the Factual Allegations set
2 forth in Section I above, Respondent Hestmark fails to meet the requirements of RCW 19.146.310(1)(g) and
3 WAC 208-660-350(2)(a) by failing to demonstrate character and general fitness such as to command the
4 confidence of the community and to warrant a belief that the business will be operated honestly and fairly
5 within the purposes of the Act.

6 **III. AUTHORITY TO IMPOSE SANCTIONS**

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

12 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 19.146.220(5)(a), the Director may issue
13 orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed
14 mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker
15 or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9).

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

17 Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth
18 in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis
19 for the entry of an Order under RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.310.

20 Therefore, it is the Director's intention to ORDER that:

21 **4.1** Respondent Thomas Andrew Hestmark's application for a loan originator license is denied.

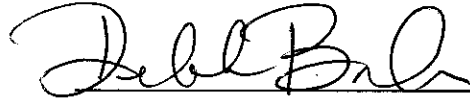
22 **4.2** Respondent Thomas Andrew Hestmark is prohibited from participation in the conduct of the affairs of
23 any mortgage broker subject to licensure by the Director, in any manner, through December 19, 2013.

24 **V. AUTHORITY AND PROCEDURE**

25 This Statement of Charges and Notice of Intention to Enter an Order to Deny License Application and
Prohibit from Industry (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220,

1 RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05
2 RCW (The Administrative Procedure Act). Respondent may make a written request for a hearing as set forth in
3 the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
4 Statement of Charges.

5 Dated this 13th day of June, 2007.

7 

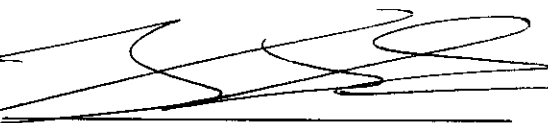
8 DEBORAH BORTNER
9 Director
10 Division of Consumer Services
11 Department of Financial Institutions

10 Presented by:

11 

12 EDWARD JURSEK
13 Financial Legal Examiner

14 Approved by:

15 

16
17 FATIMA BATIE
18 Financial Legal Examiner Supervisor

