

Terms Completed

ORDER SUMMARY – Case Number: C-07-425

Name(s): Glen Lamoyne Ottmar

Order Number: C-07-425-08-FO01

Effective Date: April 18, 2009

License Number: DFI: 43843

Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)
If applicable, you must specifically note the ending dates of terms.

License Effect: Denial

Not Apply Until:

Not Eligible Until:

Prohibition/Ban Until: May 17, 2011

Investigation Costs	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
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:				

Comments:



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:

GLEN LAMOYNE OTTMAR,
Respondent.

OAH NO. 2008-DFI-0022

NO. C-07-425-07-FO01

FINAL DECISION & ORDER

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 Motion for Summary Judgment (hereinafter, "Initial Order") based upon a Statement of Charges and Notice of Intention to Enter an Order to Deny License Application (hereinafter, "Statement of Charges") issued by the Division of Consumer Services (hereinafter, "Division") on or about December 17, 2007, under the authority of the Mortgage Broker Practices Act, Ch. 19.146 RCW (hereinafter, "MBPA").

The Respondent, GLEN LAMOYNE OTTMAR (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 Monty Futch (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, Kate Reynolds (hereinafter, "Division Counsel"). Respondent did not file a response to the Summary Judgment Motion. Then, on August 12, 2008, the Administrative Law Judge issued an Initial Order granting the summary judgment in favor of the Division. The Initial Order contained Findings of Fact (hereinafter, "FOF") and Conclusions of Law (hereinafter, "COL").

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

1 The Division subsequently presented this matter to the Director for entry of a final decision
2 and order prepared by the Division. However, this proposed final decision and order prepared by the
3 Division was in the nature of a *default or uncontested* final order – i.e., in a form and style that is
4 properly reserved for those cases which are either (1) uncontested from inception or (2) come before
the Director as a result of an applicant's default.

5 This case *was* contested by Respondent in the sense that Respondent timely requested an
6 administrative hearing and filed a response to the Summary Judgment Motion, even though he
7 represented himself. Respondent did *not* default. Respondent simply did not file a petition for
8 review of the Initial Order. Division's proposed final decision and order are inappropriate in form
9 and substance, because they do not convey to the parties or to a superior court (in the event of
10 judicial review) the Director's required deliberation, even in circumstances such as these, of the
sufficiency and propriety of the Administrative Law Judge's grant of summary judgment.

11 Accordingly, the Director subsequently received and has now considered the entire Record.
12 This Final Decision and Order are based upon a consideration of the entire Record, including,
13 without limitation, the following:

- 14 1. License Application dated May 17, 2007;
- 15 2. Statement of Charges;
- 16 3. Application for Adjudicative Hearing;
- 17 4. Summary Judgment Motion of Division Counsel, including Memorandum in Support of
18 Department's Motion for Summary Judgment and Declaration of Robert E. Jones with
19 Exhibits;
- 20 5. Respondent's Response to Summary Judgment Motion, including letters and supporting
21 documentation showing a diagnosis of cataracts in his left eye) dated April 23, 2008, and
22 April 28, 2008, respectively; and
- 23 6. The Initial Order.

24 1.0 Summary of the Case

25 This case concerns whether Respondent's application for a Loan Originator License
(hereinafter, "License") should be denied on account of:

1. Two consent orders with the Securities Division of the Department, both dated July 22,
2002, in which Respondent was prohibited from applying for a securities salesperson or investment
adviser representative license for a period of seven (7) years. In this regard, RCW 19.146.310(1)(c)

1 and WAC 208-660-350(2)(b) disqualifies an applicant from a License if a license or registration
2 under the MBPA or any similar state law has been revoked or suspended within five (5) years of the
3 License Application date, May 17, 2007.

4 2. Respondent negligently providing misleading or inaccurate information in his License
5 Application.

6 In addition, this case involves whether Respondent acted at least “negligently” as a matter of
7 law pursuant to RCW 19.146.0201(8) in failing to disclose the existence of the afore-mentioned
8 consent orders when asked in his License Application, and whether, under authority of RCW
9 19.146.220(5)(a), the Director should prohibit Respondent from participating in the conduct of the
10 affairs of a licensed mortgage broker or loan originator through May 15, 2014.

11 2.0 Preliminary Considerations

12 2.1 Standards for Summary Judgment in Administrative Actions. The Director takes note
13 preliminarily of the following standards which are to be applied to motions for summary judgment in
14 an administrative action under the Administrative Procedures Act, Chapter 34.05 RCW (hereinafter,
15 “APA”). The Department has adopted the Model Rules of Procedure, Chapter 10-08 WAC, except to
16 the extent of any conflict with the Department’s Rules of Procedure.¹ WAC 10-08-135 sets forth the
17 standards to be followed by the Department and the Administrative Law Judge, as its agent, when
18 considering the Summary Judgment Motion and the Summary Judgment Response, and declares that
19 “[a] motion for summary judgment may be granted and an order issued [only] if the written record
20 shows that there is no genuine issue as to any material fact and that the moving party is entitled to
21 judgment as a matter of law.” In evaluating the application of this standard, the Director may rely on
22 applicable law from sources other than WAC 10-08-135 itself and must be respectful of the
23 constitutional rights of respondents.² To that end, the Director is required to weigh on review all
24 pleadings, evidence and argument in a light most favorable to the non-moving party.³ If there is any

25 ¹ 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 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.”

² 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 modify additional requirements imposed by statute, including the Administrative Procedure Act.”

³ *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998).

1 inference of a triable issue of fact, then summary judgment is inappropriate.¹ Litigants are entitled to
2 a dispositive hearing on all issues of fact and law.² These principles apply equally to the
3 Administrative Law Judge and to the Director evaluating the Initial Order.³

4 2.2 Proper Consideration by Director absent Petition for Review. Respondent did not file
5 a petition for review contesting the Initial Order. However, even when a party has not filed a petition
6 for review, the Director still has the authority and duty, prior to entering a Final Decision and Order,
7 to consider whether any part of the Initial Order is not supported by the Record⁴ and whether
8 confirmation of the Initial Order, without modification, would be an error of law. Indeed, with
9 regard to the COL as contained in the Initial Order, the Director is obliged, in the manner of a
10 reviewing court, to consider the statutes and implementing regulations of the Division under the error
11 of law standard, which permits the Director to substitute his judgment for that of the Statement of
12 Charges and the Administrative Law Judge's Initial Order.⁵

13 2.3 Director's Consideration of FOF and COL. After due consideration of the record and
14 in a light most favorable to Respondent, the Director is of the view that the FOF and COL of the
15 Initial Order are substantially correct, except for the following:

16 2.3.1 Incorrect Provision of Law Cited. The Administrative Law Judge has
17 incorrectly cited RCW 19.146.220(5)(b) in regard to prohibiting Respondent from the industry. The
18 correct statutory provision in this regard for a license *applicant*, as opposed to a person with a license
19 who is later discovered to have been untruthful, is RCW 19.146.220(5)(a) -- not RCW
20 19.146.220(5)(b).

21 2.3.2 "Negligence" is the Sole Standard Involving No Question of Fact. The
22 Respondent was *at least* "negligent" in making false statements or omitting material facts on his
23 License Application -- namely, the prior consent orders of the Division of Securities. However, to
24 find *intent* would involve exploration of a question of fact, which is inappropriate on summary
25

22 ¹ *Davis v. W. One Auto. Group*, 140 Wn. App. 449, 456 (2007).

23 ² *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 (2000).

24 ³ *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

25 ⁴ 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); see also
Towle v. Department of Fish and Wildlife, 94 Wn.App. 196, 971 P.2d 591 (1999).

⁵ 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).

1 judgment.⁶ And since the Division has not sought a hearing to determine whether Respondent's act
2 or omission was intentional, the Director can only find that Respondent's act or omission was
3 "negligent" as a matter of law. For this reason, COL 9, at page 7 of the Initial Order, is overstated to
4 the degree that it uses language that expresses or implies intentional conduct by Respondent -- a
5 standard that cannot be adjudicated as a matter of law without a hearing. Accordingly, the Director
6 modifies COL 9 of the Initial Order, as follows:

7 "In answer to DFI's assertions, the Respondent contends that his inaccurate and false
8 statements on his application were incorrect mistakes. The proffered defense ((is not
9 ~~credible in any degree~~)) supports the conclusion that Respondent was at least
10 negligent as a matter of law. Not only did the Respondent have cataracts in only one
11 eye, but his answers to all questions in the application were appropriate, save for
12 question 4, 5 and 6 in the 'Regulatory Action Disclosure' portion of the application.
13 ((Further, his incomplete answer to question number 4 demonstrates that he
14 understood the underlying questions. It taxes belief that an applicant for a license
15 requiring character, fitness, diligence, and trust could have inadvertently provided
16 false answers to very important questions on a simple application.))⁷

17 2.4. Duration of Prohibition. Is a seven (7) year ban appropriate for Respondent's
18 particular "negligent" act or omission? The Director has discretion under RCW 19.146.220(5)(a).
19 There are degrees of negligence.⁸ The Director's exercise of discretion is distinct in every case of this
20 type because each case is different. The Director finds that in this particular case, while
21 Respondent's negligence is not excusable, a ban of seven (7) years from the industry is not suited to
22 the circumstances. Rather, the Director is of the view that a ban of four (4) years from participating
23 in the mortgage brokerage industry in Washington State is appropriate in this case. Had this matter
24 been adjudicated by hearing, the findings may have led the Director to impose a harsher penalty if the
25 testimony revealed by a preponderance of the evidence that Respondent had acted intentionally. But
on summary judgment, the Director cannot declare as a matter of law that Respondent acted any
more than negligently. Therefore, the length of prohibition from participation in the mortgage
brokerage industry should be related only to what has been adjudicated as a matter of law.

23 ⁶ The Administrative Law Judge's remarks in COL 9, at Page 7 of the Initial Order, are excessive and overreaching in the context of proper deliberation on
24 motion for summary judgment. "Credibility" is usually a question of fact and goes to the "weight of evidence," not whether there is evidence at all.
Respondent's claim that his act or omission was an innocent mistake is a representation that the Director must treat as testimonial evidence.

25 ⁷ Strikethroughs are deletions by the Director. Underlining denotes an addition by the Director.

⁸ It is commonly understood in tort law that there can be either "simple" negligence or "gross" negligence,. Each of these often lead to different legal
outcomes.

1 3.0 Findings of Fact. Now, therefore, the Director re-affirms FOF 1 through FOF 8, inclusive,
2 at pages 2-4 of the Initial Order.

3 4.0 Conclusions of Law. Now, therefore, the Director re-affirms: COL 1 through COL 10,
4 inclusive, at pages 4-8 of the Initial Order, EXCEPT to the extent set forth in the revised and
5 modified conclusions of law set forth in Subsection 2.3 above, which are controlling to the extent of

6 5.0 Final Order. Having made Findings of Fact and Conclusions of Law as set forth above, IT IS
7 HEREBY ORDERED AS FOLLOWS:

8 5.1 Denial of License. The application of Respondent, GLEN LAMOYNE OTTMAR, for a
9 Loan Originator License is DENIED.

10 5.2 Prohibition from Industry. Respondent GLEN LAMOYNE OTTMAR is further
11 PROHIBITED until May 17, 2011, from participation, in any manner, in the conduct of the affairs
12 of any mortgage broker or loan originator subject to licensure by the Department. Nothing in this
13 Final Decision and Order shall be construed to prospectively confer upon the Respondent, GLEN
14 LAMOYNE OTTMAR, qualification for or entitlement to a grant of a mortgage broker or loan
15 originator license from the Department on or after May 17, 2011.

16 5.3 Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to file a
17 Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition
18 must be filed in the Office of the Director of the Department of Financial Institutions by courier at
19 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,
20 Washington 98504-1200, within ten (10) days of service of this Final Order upon Respondent. The
21 Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for
22 Reconsideration a prerequisite for seeking judicial review in this matter. A timely Petition for
23 Reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the
24 agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the
25 date by which it will act on a petition.

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

1 5.5 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 5.6 Service. For purposes of filing a Petition for Reconsideration or a Petition for
5 Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service
6 attached hereto.

7 5.7 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative
8 Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective immediately
9 upon deposit in the United States Mail.

Dated at Tumwater, Washington, on this 8th day of April, 2009.

10 WASHINGTON STATE DEPARTMENT
11 OF FINANCIAL INSTITUTIONS

12 By:

13 Scott Jarvis, Director
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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:

GLEN LAMOYNE OTTMAR,

Respondent.

NO. C-07-425-07-SC01

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

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 Glen Lamoyne Ottmar (Respondent Ottmar) submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a loan originator license under Western States Mortgage Corp., a mortgage broker exempt from licensing under the Act. The on-line application was received by the Department on or about May 15, 2007.

1.2 Prior Administrative Action.

- A.** On December 13, 2001, the Securities Division of the Washington State Department of Financial Institutions (Securities Division) entered a Summary Order to Cease and Desist, Notice of Intent to Suspend or Revoke Securities Salesperson Registration, and Notice of Intent to Impose Fines and Order Affirmative Relief number SDO-107-01 (Imtek Order) against Respondent Ottmar and others. The Imtek Order alleged that Respondent Ottmar offered and sold viatical settlement contracts to at least thirteen persons in violation of the anti-fraud section of the Securities Act.

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

- 1 • 1-Has any State or federal regulatory agency or foreign financial regulatory authority ever
2 barred you from association with any entity regulated by such commission, authority, agency,
3 or officer, or from engaging in a financial services-related business?

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

6 II. GROUNDS FOR ENTRY OF ORDER

7 **2.1 Requirement of No Prior License Suspension or Revocation.** Based on the Factual Allegations set
8 forth in Section I above, Respondent Ottmar fails to meet the requirements of RCW 19.146.310(1)(c) and
9 WAC 208-660-350(2)(b) by having a license issued under this chapter or any similar state statute suspended or
10 revoked within five years of the filing of the present application.

11 **2.2 Prohibited Practices.** Based on the Factual Allegations set forth in Section I above, Respondent
12 Ottmar is in apparent violation of RCW 19.146.0201(8) and WAC 208-660-500(3)(i) for negligently making
13 any false statement or willfully making any omission of material fact in connection with any application or any
14 information filed by a licensee in connection with any application, examination or investigation conducted by
15 the Department.

16 **2.3 Requirement to Provide Information on License Application.** Based on the Factual Allegations set
17 forth in Section I above, Respondent Ottmar fails to meet the requirements of RCW 19.146.300(1) and (2) and
18 RCW 19.146.310(1)(b) by failing to provide an accurate and complete license application in the form
19 prescribed by the Director.

20 **2.4 Requirement to Demonstrate Character and General Fitness.** Based on the Factual Allegations set
21 forth in Section I above, Respondent Ottmar fails to meet the requirements of RCW 19.146.310(1)(g) and
22 WAC 208-660-350(2)(a) by failing to demonstrate character and general fitness such as to command the
23 confidence of the community and to warrant a belief that the business will be operated honestly and fairly
24 within the purposes of the Act.
25

1 **III. AUTHORITY TO IMPOSE SANCTIONS**

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

7 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 19.146.220(5)(a), the Director may issue
8 orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed
9 mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker
10 or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9).

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

12 Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth
13 in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis
14 for the entry of an Order under RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.310.
15 Therefore, it is the Director's intention to ORDER that:

16 **4.1** Respondent Glen Lamoyne Ottmar's application for a loan originator license be denied.

17 **4.2** Respondent Glen Lamoyne Ottmar be prohibited from participation in the conduct of the affairs of any
18 mortgage broker subject to licensure by the Director, in any manner, through May 15, 2014.

19 **V. AUTHORITY AND PROCEDURE**

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

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2 Dated this 17th day of December, 2007.

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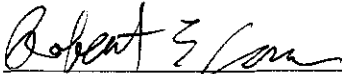
DEBORAH BORTNER

Director

Division of Consumer Services

Department of Financial Institutions


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6 Presented by:

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8 

9 ROBERT E. JONES

Financial Legal Examiner

10
11 Approved by:

12 

13 FATIMA BATIE

14 Financial Legal Examiner Supervisor

