

# DEPARTMENT OF FINANCIAL INSTITUTIONS DIVISION OF CONSUMER SERVICES

## **BRIEF ADJUDICATIVE PROCEEDING**

IN THE MATTER OF INVESTIGATING Whether there has been a violation of the Mortgage Broker Practices Act of Washington (chapter 19.146 RCW) by:

NO. C-09-325-10-FO01

INWEST ADVANTAGE INC.,

FINAL DECISION AND ORDER

Respondent.

## I. DIRECTOR'S CONSIDERATION

A. <u>Procedural History</u>. This matter has come before the Director of the Department of Financial Institutions of the State of Washington (Director) pursuant to RCW 34.05.464. On September 15, 2009, the Director, through Consumer Services Division Director, Deborah Bortner, entered a Statement of Charges and Notice of Intention to Enter an Order to Impose Fine and Collect Investigation Fee (Statement of Charges) against InWest Advantage Inc., Respondent. 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 Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for a Brief Adjudicative Proceeding for InWest Advantage Inc. The Department served the Statement of Charges, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for a Brief Adjudicative Proceeding for InWest Advantage Inc., on Respondent, on September 15, 2009, by First-Class mail and Federal Express overnight delivery.

Brief Adjudicative Proceeding Final Decision and Order In re InWest Advantage Inc. No. C-09-325-10-FO01 Page 1 of 6 Pages On October 19, 2009, the Department received from Respondent's representative, Nikolay Borisenko, a completed Application for Brief Adjudicative Proceeding. On November 20, 2009, the Division of Consumer Services made a request to the BAP Hearing Officer, Joseph M. Vincent, (BAP Hearing Officer Vincent) to schedule and conduct a hearing on the Statement of Charges. On November 23, 2009, BAP Hearing Officer Vincent issued a Notice of Assignment & Time to File Additional Materials giving Respondent until Wednesday, December 9, 2009, to provide additional materials.

On March 1, 2010, BAP Hearing Officer Vincent issued an Initial Decision and Order. This Initial Decision and Order includes the following Findings of Fact:

- Respondent was originally licensed as a mortgage broker on March 14, 2007.
- Respondent was required to file a Mortgage Broker Annual Report (MB AR) on or before March 31 of every year following any year in which it held a Mortgage Broker license.
- Respondent was required to file the MB AR for 2007 on or before March 31, 2008.
- Respondent did not submit its 2007 MB AR on or before March 31, 2008.
- Respondent was required to file the 2008 MB AR on or before March 31, 2009, but the Department did not receive an MB AR from the Respondent by this date.
- The Department issued a Statement of Charges on September 9, 2009.
- Respondent filed the 2008 MB AR on October 19, 2009.
- Respondent's representative was on notice of the importance and legal requirement of timely filing of the MBAR on or before March 31<sup>st</sup> of each year for as long as Respondent remained a licensee.

Brief Adjudicative Proceeding Final Decision and Order In re InWest Advantage Inc. No. C-09-325-10-FO01 Page 2 of 6 Pages The Initial Decision and Order ordered Respondent to pay a fine of \$3,000 and to pay investigative costs of \$96. On March 1, 2010, the Initial Decision and Order was mailed to Respondent via First-Class mail.

Pursuant to RCW 34.05.464 and WAC 10-08-211, Respondent had twenty (20) days from the date of service of the Initial Decision and Order to file a Petition for Review of the Initial Decision and Order. Respondent did not file a Petition for Review during the statutory period.

B. <u>Record Presented</u>. The record presented to the Director for his review and for entry of a final decision included the following:

- 1. Statement of Charges, and Notice of Opportunity to Defend and Opportunity for Hearing, with documentation of service;
- 2. Completed application for Brief Adjudicative Proceeding for InWest Advantage Inc.;
- 3. Letter requesting the scheduling of a Brief Adjudicative Proceeding;
- 4. Notice of Assignment & Time To File Additional Materials dated September 17, 2009;
- 5. Letter from Designated Broker Nikolay Borisenko, dated October 19, 2009;
- 6. Memorandum of Robert Jones to Hearing Officer Vincent, dated February 25, 2010, which includes the Department's Resolution and Closure of Complaint No. 28610; and
- 7. Initial Decision and Order dated March 1, 2010, with documentation of service.
- C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.461, the

Director hereby adopts the Initial Decision and Order, which is attached hereto.

### II. FINAL ORDER

Based upon the foregoing, and the Director having considered the record and being

### otherwise fully advised, NOW, THEREFORE:

Brief Adjudicative Proceeding Final Decision and Order In re InWest Advantage Inc. No. C-09-325-10-FO01 Page 3 of 6 Pages

### A. <u>IT IS HEREBY ORDERED, That:</u>

1. Respondent InWest Advantage Inc., pay a fine of \$3,000; and

2. Respondent InWest Advantage Inc., pay an investigative fee of \$96.

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

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

C. <u>Stay of Order</u>. 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.

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

E. <u>Non-compliance with Order</u>. If InWest Advantage Inc., does not comply with the terms of this order, the Department may seek its enforcement by the Office of Attorney General to include the collection of the fine and fees imposed herein.

Brief Adjudicative Proceeding Final Decision and Order In re InWest Advantage Inc. No. C-09-325-10-FO01 Page 4 of 6 Pages F. <u>Service.</u> For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service attached hereto.

Dated this 28 2010, at Tumwater, Washington. 'dav ot SCOTT JARVIS, Director Washington State Department of Financial Institutions

Brief Adjudicative Proceeding Final Decision and Order In re InWest Advantage Inc. No. C-09-325-10-FO01 Page 5 of 6 Pages

#### NOTICE TO THE PARTIES

Judicial Review of this Final Decision and Order is available to a party according to the provisions set out in Part V of the Washington Administrative Procedure Act, RCW 34.05.510 through RCW 34.05.598, inclusive. Judicial Review may be made by filing a Petition for Judicial Review (RCW 34.05.570) within thirty (30) days of the date of the Final Decision and Order, as permitted under RCW 34.05.542(2). The contents of the Petition for Review shall be according to the requirements of RCW 34.05.546.

This is to certify that the above FINAL DECISION AND ORDER has been served upon the following parties on  $\frac{222}{200}$ , 2010, by depositing a copy of same in the United States mail, postage prepaid.

#### Mailed to the following:

ATTN: Nikolay Borisenko Designated Broker InWest Advantage, Inc. 524 Cantera Ct. Roseville, CA 95747

ATTN: Pacific Registered Agents, Inc Registered Agent InWest Advantage, Inc. 5400 Carillon Point Ste 412 Kirkland, Washington 98033

James R. Brusselback Enforcement Chief Department of Financial Institutions Division of Consumer Services P.O. Box 41200 Olympia, Washington 98504-1200 ATTN: Nikolay Borisneko Designated Broker InWest Advantage, Inc. 17914 E 12<sup>th</sup> Ct Greenacres, Washington 99016

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1	STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS DIVISION OF CONSUMER SERVICES		
3	IN THE MATTER OF DETERMINING Whether there has been a violation of the	NO. C-09-325-09-SC01	
4	Mortgage Broker Practices Act of Washington by:	STATEMENT OF CHARGES and	
5	INWEST ADVANTAGE,	NOTICE OF INTENTION TO ENTER AN ORDER TO IMPOSE FINE AND COLLECT	
6	Respondent.	INVESTIGATION FEE	
7	INTRODUCTION		
8	Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial		
9	Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the		
10	Mortgage Broker Practices Act (Act). After having conducted an investigation pursuant to RCW 19.146.235, and		
11	based upon the facts available as the date of this Statement of Charges, the Director, through his designee, Division		
12	of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:		
13	I. FACTUAL ALLEGATIONS		
14	<b>1.1 Respondent</b> InWest Advantage (Respondent) was licensed by the Department of Financial Institutions		
15	of the State of Washington (Department) to conduct business as a mortgage broker at all times relevant to the		
16	conduct alleged.		
17	<b>1.2</b> Failure to File Mortgage Broker Annual Report. By March 31, 2009, Respondent was required to		
18	file an annual report of mortgage broker activity to include the total number of closed loans originated and the		
19	total volume of closed loans originated. As of the date of this Statement of Charges Respondent has not filed		
20	the 2008 mortgage broker annual report.		
21	<b>1.3</b> On-Going Investigation. The Department's investigation into the alleged violations of the Act by		
22	Respondent continues to date.		
23	//		
24	//		
25	//		
	STATEMENT OF CHARGES InWest Advantage C-09-325-09-SC01	DEPARTMENT OF FINANCIAL INSTITUTIONS Division of Consumer Services 150 Israel Rd SW PO Box 41200 Olympia, WA 98504-1200 (360) 902-8703	

	II. GROUNDS FOR ENTRY OF ORDER		
2	2.1 Requirement to File Mortgage Broker Annual Report. Based on the Factual Allegations set forth in		
	Section I above, Respondent is in apparent violation of RCW 19.146.290(1) and WAC 208-660-400(1), (2), (3),		
	and (4) for failing to file the mortgage broker annual report.		
	III. AUTHORITY TO IMPOSE SANCTIONS		
	<b>3.1</b> Authority to Impose Fine. Pursuant to RCW 19.146.220(2)(e) the Director may impose fines on a		
	licensee or other person subject to the Act for any violations of the Act.		
	3.2 Authority to Collect Investigation Fee. Pursuant to RCW 19.146.228(2), WAC 208-660-520, and WAC		
	208-660-550(4), upon completion of any investigation of the books and records of a licensee or other person subject		
	to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of		
	the investigation. The investigation charge will be calculated at the rate of \$48 per hour that each staff person		
	devoted to the investigation.		
	IV. NOTICE OF INTENTION TO ENTER ORDER		
	Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth		
	in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis		
	for the entry of an Order under RCW 19.146.220, RCW 19.146.221 and RCW 19.146.223. Therefore, it is the		
	Director's intention to ORDER that:		
ļ	4.1 Respondent InWest Advantage pay a fine of \$3,000; and		
	4.2 Respondent InWest Advantage pay an investigation fee, which as of the date of these charges is \$96 calculated at \$48 per hour for two staff hours devoted to the investigation; and		
	<b>4.3</b> Respondent InWest Advantage file the 2008 annual report of mortgage broker activity.		
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	STATEMENT OF CHARGES InWest Advantage C-09-325-09-SC01 DEPARTMENT OF FINANCIAL INSTITUTIONS Division of Consumer Services 150 Israel Rd SW PO Box 41200 Olympia, WA 98504-1200 (360) 902-8703		

V. AUTHORITY AND PROCEDURE 1 This Statement of Charges and Notice of Intention to Enter an Order to Impose Fine and Collect 2 Investigation Fee (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, 3 RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 4 RCW (The Administrative Procedure Act). Respondent may make a written request for a Brief Adjudicative 5 Proceeding as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR BRIEF 6 ADJUDICATIVE PROCEEDING accompanying this Statement of Charges. 7 Dated this 15<sup>th</sup> day of September, 2009. 8 9 10 11 DEBORAH BORTNER Director 12 **Division of Consumer Services Department of Financial Institutions** 13 Presented by: 14 15 FATIMA BATIE Financial Legal Examiner Supervisor 16 17 Approved by: 18 19 IES R. BR hforcement Chief 20 21 22 23 24 25 DEPARTMENT OF FINANCIAL INSTITUTIONS STATEMENT OF CHARGES Division of Consumer Services InWest Advantage 150 Israel Rd SW C-09-325-09-SC01 PO Box 41200 Olympia, WA 98504-1200 (360) 902-8703

1	STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS		
2	DIVISION OF CONSUMER SERVICES		
3	IN THE MATTER OF DETERMINING Whether there has been a violation of the Mortgage Broker Practices Act of Washington	No. C-09-325-09-SC01	
	by:	NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR BRIEF	
5	INWEST ADVANTAGE, Respondent.	ADJUDICATIVE PROCEEDING	
7	THE STATE OF WASHINGTON TO:	InWest Advantage	
8	YOU ARE HEREBY NOTIFIED that a STATEMENT OF CHARGES has been issued by the		
9	Department of Financial Institutions, a true and correct copy of which is attached and made a part hereof.		
10	YOU ARE HEREBY NOTIFIED that you may file a Request for Brief Adjudicative Proceeding before the		
11	Washington State Department of Financial Institutions on the Statement of Charges. Service of this notice is		
12	deemed complete upon deposit in the United States mail. <u>YOUR REQUEST MUST BE RECEIVED BY THE</u>		
13	DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN TWENTY (20) DAYS FROM THE DATE YOU		
14	RECEIVED THIS NOTICE. If you request a Brief Adjudicative Proceeding, you will be notified of the schedule		
15	and oral argument, if any, at least seven (7) days in advance.		
16	The Brief Adjudicative Proceeding will be as informal as is practical within the requirements of the		
17	Administrative Procedure Act (see chapter 34.05 RCW). If you are limited English-speaking or hearing impaired,		
18	you have the right to have an interpreter appointed at no cost to you, as discussed below.		
19	INTERPRETER AVAILABILITY. If you are	a person who, because of non-English-speaking cultural	
20	background, cannot readily speak or understand the English language, or if you are a person who, because of a		
21	hearing impairment or speech defect, cannot readily understand or communicate in spoken language, including		
22	persons who are deaf, deaf and blind, or hard of hearing, <u>AND YOU NEED AN INTERPRETER</u> , then a qualified interpreter will be appointed at no cost to you. You may request the appointment of a qualified interpreter by		
23			
24	indicating your request on the attached Request for Brief Adjudicative Proceeding form.		
25			
- - -	NOTICE OF OPPORTUNITY TO DEFEND I AND OPPORTUNITY FOR BRIEF ADJUDICATIVE PROCEEDING	DEPARTMENT OF FINANCIAL INSTITUTIONS Division of Consumer Services 150 Israel Rd SW PO Box 41200 Olympia, WA 98504-1200 (360) 902-8703	

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YOU ARE FURTHER NOTIFIED that if the Department of Financial Institutions does not <u>RECEIVE</u> the Request for Brief Adjudicative Proceeding form within twenty (20) days from the date you received this notice, this will constitute a waiver of your right to a Brief Adjudicative Proceeding and the Director will find that you do not contest the allegations of the Statement of Charges. Upon such a finding by the Director a final order will be immediately entered disposing of this matter as described in the Statement of Charges. If you desire a Brief Adjudicative Proceeding in this matter, please return the attached Request for Brief Adjudicative Proceeding to:

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Department of Financial Institutions Division of Consumer Services Attn: Fatima Batie PO Box 41200 Olympia, Washington 98504-1200

Dated this 15<sup>th</sup> day of September 2009.

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DEBORAH BORTNER Director Division of Consumer Services Department of Financial Institutions



NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR BRIEF ADJUDICATIVE PROCEEDING DEPARTMENT OF FINANCIAL INSTITUTIONS Division of Consumer Services 150 Israel Rd SW PO Box 41200 Olympia, WA 98504-1200 (360) 902-8703