



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:

PREFERRED FINANCIAL GROUP, INC., and
EDWARD HARTOUNIAN, Owner and Designated
Broker,

Respondents.

OAH No. 2009-DFI-0068

DFI No. C-09-352-10-FO01

FINAL DECISION & ORDER

I. DIRECTOR'S CONSIDERATION

A. Procedural History. 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 23, 2009, the Director, through Deborah Bortner, the Director of the Division of Consumer Services ("Division"), entered a Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Revoke License, Impose Fine, and Collect Investigation Fee ("Statement of Charges"). On September 23, 2009, the Director, through the same Division Director, entered a Temporary Order to Cease and Desist ("Temporary Order").

THE STATEMENT OF CHARGES AND TEMPORARY ORDER ARE ATTACHED TO AND MADE A PART OF THIS FINAL ORDER.

The Statement of Charges was accompanied by a cover letter dated September 24, 2009, a Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for Respondents Preferred Financial Group, Inc. and Edward Hartounian.

The Temporary Order was accompanied by a cover letter dated September 24, 2009, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for Respondents Preferred Financial Group, Inc. and Edward Hartounian. The Department served the Statement of Charges, cover letter dated September 24, 2009, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for Respondents Preferred Financial Group, Inc. and Edward Hartounian on Respondents on September 28, 2009, by United States Postal Service First-Class mail and Federal Express overnight delivery. The Department served the Temporary Order, cover letter dated September 24, 2009, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for Respondents Preferred Financial Group, Inc. and Edward Hartounian on Respondents on September 28, 2009, by United States Postal Service First-Class mail and Federal Express overnight delivery.

On October 6, 2009, Respondents filed an Application for Adjudicative Hearing for the Statement of Charges (“Request for Hearing”). Respondents did not file an Application of Adjudicative Hearing for the Temporary Order.

On December 7, 2009, 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 February 19, 2010, OAH issued a Notice of Prehearing Conference by Telephone scheduled for Wednesday, March 10, 2010, at 10:00a.m. to be held

before ALJ Anita T. Davidson (“ALJ Davidson”). The conference was rescheduled by the presiding ALJ because of a scheduling conflict.

On April 19, 2010, OAH issued a Second Notice of Prehearing Conference by Telephone scheduled for Thursday, May 6, 2010, at 1:15 p.m. to be held before ALJ Davidson.

Representative for the Department, Assistant Attorney General Charles E. Clark (“AAG Clark”), appeared for the telephonic hearing, but Respondents did not appear. AAG Clark requested the issuance of a default order.

On June 14, 2010, OAH issued a Notice of Prehearing Conference by Telephone scheduled for Thursday, July 8, 2010, at 9:00 a.m. to be held before ALJ Davidson.

Representative for the Department, AAG Clark, appeared for the telephonic hearing, but Respondents did not appear. AAG Clark requested the issuance of a default order.

On July 15, 2010, ALJ Davidson issued an Order of Dismissal—Respondent Dismissal (“Order of Default”). The Order of Default ordered that the Respondent failed to appear or participate in the prehearing conference and that the pending appeal is dismissed.

On July 15, 2010, ALJ Davidson mailed the Default Order to Respondents.

On or about August 3, 2010, prior to the issuance of a Final Order by the Director, the Respondents attempted to file a letter by certified mail with the Washington Attorney General’s Office, which appears to have been an attempt at a motion to set aside the Order of Default, since it contains (among other issues not germane to the issue of default) an explanation of why Respondents did not appear before ALJ Davidson as the OAH Record indicates she had ordered.

The Attorney General did not treat this August 3, 2010, letter, as a motion to set aside a default. For purposes of this Final Order, this August 3, 2010, letter is hereinafter referred to as “Motion to Set Aside Default.” There is no record that the Motion to Set Aside Default was served on the OAH as required. However, even if it had been, an August 3, 2010, date of filing would have been far in excess of the seven (7) day period for bringing a motion to set aside a default before an Administrative Law Judge. [*See* RCW 34.05.440(3).]

However, on July 29, 2010, the AAG Clark did file on behalf of the Division a motion to modify the Order of Dismissal (“Division’s Motion to Modify Order”). After such filing, Respondents did not object to the Division’s Motion to Modify Order or further object to the Order of Default.

Subsequently, on August 27, 2010, ALJ Davidson, in full consideration of the Division’s Motion to Modify Order, issued and served by mail an Initial Order of Default (“Initial Order”). It is from the date of this Initial Order that Respondents had twenty (20) days in which to file a petition for review to the Director.

On or about September 8, 2010, Respondent Edward Hartounian, on behalf of himself and Respondent Preferred Financial Group, Inc., filed with the Director a Petition for Review in the form of a letter dated August 30, 2010, which appears to be identical in content to the Motion to Set Aside Default (“Petition for Review”).

Subsequently, the Director became aware that AAG Clark, counsel of record for the Division, had not received a copy of the Petition for Review. Rather than enforce the strict

requirement that the Respondent also serve the Division's counsel when lodging a petition for review, the Director elected to treat the Petition for Review as timely (i.e., as served on the Director within 12 days of the Initial Order). However, to permit due process to the Division, the Director, by and through his general counsel, Joseph M. Vincent, issued to both parties a letter dated December 1, 2010 ("Notice to File Division's Reply") permitting AAG Clark to respond to the Petition for Review within ten (10) days by filing a reply to the Petition for Review.

The Notice to File Division's Reply, dated December 1, 2010, also noted that neither the Statement of Charges nor ALJ Davidson's Initial Order specified any specific amount as to fines, costs, or penalties, and there is no evidence of record concerning the same in the OAH Record.

On December 9, 2010, in reply to the Petition for Review, the Division, by and through AAG Clark, filed with the Director the Department's Reply to Petition for Review "Division's Reply").

B. Record Presented. The record presented to the Director for his review and for entry of a Final Decision and Order includes the entire OAH Record and filings with the Director after the Initial Order, including (without limitation) the following:

1. Statement of Charges, cover letter dated September 24, 2009, and Notice of Opportunity to Defend and Opportunity for Hearing, with documentation of service;
2. Temporary Order, cover letter dated September 24, 2009, and Notice of Opportunity to Defend and Opportunity for Hearing, with documentation of service;
3. The Request for Hearing of Respondents;
4. The Request to OAH for Assignment of Administrative Law Judge;

5. Notice of Prehearing Conference by Telephone dated February 19, 2010, with documentation of service;
6. Second Notice of Prehearing Conference by Telephone dated April 19, 2010, with documentation of service;
7. Notice of Prehearing Conference by Telephone dated June 14, 2010, with documentation of service;
8. The Order of Default dated July 15, 2010, with documentation of service;
9. The Motion to Set Aside Default, dated August 3, 2010;
10. Division's Motion to Modify Order, dated July 29, 2010;
11. The Initial Order of ALJ Davidson, dated August 27, 2010;
12. The Petition for Review, dated August 30, 2010, and filed with the Director on September 8, 2010;
13. The Notice to File Division's Reply, dated December 1, 2010; and
14. The Division's Reply, dated December 9, 2010.

C. Factual Findings and Grounds For Final Decision and Order. Every consideration has been given to both the Respondents and the Division by way of procedural due process. It appears to the Director, after thorough review of the OAH Record, that there were proper grounds for entry of the Order of Default by ALJ Davidson. The Motion to Set Aside Default does not appear to have been filed with the OAH. Ignoring non-service of the OAH, however, and treating the service upon the Attorney General as sufficient, it was not timely, having been served by

certified mail upon the Attorney General on August 3, 2010, whereas the Order of Default was issued and mailed on July 15, 2010. Therefore, ALJ Davidson was privileged not to consider the Motion to Set Aside Default; and her issuance of the Initial Order on August 27, 2010, was proper.

While identical to the Motion to Set Aside Default, the Petition for Review was timely, having been filed with the Director as of September 8, 2010, less than the twenty (20) days permitted for filing a petition for review of an initial order.

The Director has previously ruled (by and through his general counsel, Joseph M. Vincent), by way of the Notice to File Division's Reply, dated December 1, 2010, that the Division would be permitted to reply to the Petition for Review within ten (10) days. AAG Clark filed the Division's Reply on December 9, 2010, which was timely.

Thereafter, this matter became fully lodged with the Director for consideration of the merits (if any) of the Petition for Review.

While the Petition for Review makes several arguments, the only one relevant to the issue before the Director is whether the Respondents are entitled, by reason of lack of service of process or their own excusable neglect, to a setting aside of the Initial Order.

After through consideration of the record presented, the Director can find no reason to set aside the Initial Order. The Petition for Review makes several explanations for ignoring ALJ Davidson, but none of them rises to the level of excusable neglect. The Respondents' failure to attend or participate in a noticed hearing subjected them properly to an order of default. [RCW 34.05.440(2); *Graves v. Employment Security Dep't*, 144 Wn. App. 302, 309, 182 P.3d 1004

(2008).] The Order of Default was properly entered against Respondents as a result of their failure to attend and participate in the prehearing conference on July 8, 2010. Once a default order has been entered, the decision to set aside the default is discretionary; but in any event, the party seeking to vacate the default must provide a basis for the requested relief. [See RCW 34.05.440(3).] The Motion to Set Aside Default was untimely filed, so it need not have been considered by ALJ Davidson. Moreover, even if it had been timely filed, it was identical in content to the later Petition for Review and would have provided ALJ Davidson with no basis to set aside the Order of Default.

By his own admission, Respondent Hartounian states in his Petition for Review that he was aware of the prehearing conference scheduled for July 8, 2010. However, he failed to follow the instructions for attending the Prehearing Conference dated July 8, 2010, and offered no explanation rising to the level of excusable neglect. Given this warning, and also in light of Respondent Hartounian having already received one orally issued “set aside” for not participating in the May 6, 2010, prehearing conference, failure to follow ALJ Davidson’s clear instructions in the Prehearing Notice was not excusable neglect.

While the matter was still within the jurisdiction of ALJ Davidson and before her issuance of the Initial Order, the Respondents further failed to diligently follow up with OAH after the Division’s Motion to Modify Order. An opposition to such motion may still have provided ALJ Davidson with an opportunity to exercise her *discretion* to set aside the default.

Respondent Hartounian’s arguments in the Petition for Review concerning his “attempts” at communicating with OAH are not supported by the OAH Record; and in light of his untimely

Motion to Set Aside Default and failure to even reply to Division's Motion to Modify Order, Respondent Hartounian's arguments, on balance, appear to the Director to lack sufficient credibility to set aside the Initial Order.

Moreover, the Director cannot ignore that the Respondents nowhere take exception in their Petition for Review to the underlying violation of the Mortgage Broker Practices Act and Rules, RCW 19.146.205(4) and WAC 208-660-175(1), resulting from a failure to maintain a surety bond. Respondents have failed to provide any evidence or argument that, even if the matter were remanded to ALJ Davidson for hearing, the Statement of Charges would not be affirmed.

The prayer for relief, as set forth in the Statement of Charges calls for a fine of \$1,100.00, payable jointly and severally by each of the Respondents. This is a reasonable fine under the circumstances. The Statement of Charges incorrectly states the names of Respondents in the prayer for investigative fees. However, the Division subsequently has requested that the proper names of Respondents be substituted, and Respondents have notice of such request by the Division and have not objected to the entry of the Final Decision and Order on that isolated ground. Therefore, the Director accepts this request as if the Statement of Charges had correctly named Respondents. The prayer for relief in the Statement of Charges alleges that an investigation of three and one-half (3.5) hours was performed by the Division in this matter and that the Division is entitled to charge an investigative fee at the rate of \$48 per hour. Respondents have not challenged the Statement of Charges on that ground. The hourly rate is supported by statute and rule. The investigative fee prayed for is reasonable.

II. FINAL ORDER

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

A. IT IS HEREBY ORDERED, That:

1. Respondents PREFERRED FINANCIAL GROUP, INC. and EDWARD HARTOUNIAN cease and desist conducting the business of a Mortgage Broker subject to the jurisdiction of the Director;
2. The license of Respondent PREFERRED FINANCIAL GROUP, INC. to conduct the business of a mortgage broker is revoked;
3. Respondents PREFERRED FINANCIAL GROUP, INC. and EDWARD HARTOUNIAN shall jointly and severally pay to Washington State Department of Financial Institutions a fine of One Thousand One Hundred Dollars (\$1,100.00); and
4. Respondents PREFERRED FINANCIAL GROUP, INC. and EDWARD HARTOUNIAN shall jointly and severally pay to Washington State Department of Financial Institutions an investigation fee of One Hundred Sixty-Eight Dollars (\$168.00).

B. Reconsideration. Pursuant to RCW 34.05.470, Respondents have 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 Respondents. 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. 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.

D. Judicial Review. Respondents have 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.

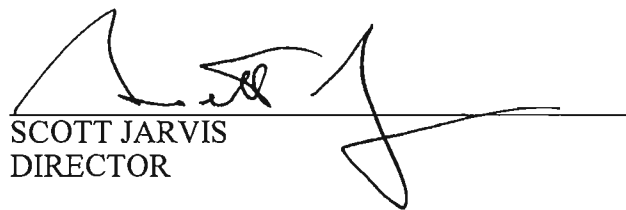
E. Non-compliance with Order. If you do not comply with the terms of this order, the Department may seek its enforcement by the Office of Attorney General to include the collection of the fine and costs imposed herein.

F. Service. 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 28th day of December, 2011.



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:

PREFERRED FINANCIAL GROUP, INC.,
and EDWARD HARTOUNIAN, Owner and
Designated Broker,

Respondents.

NO. C-09-352-09-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO CEASE AND DESIST, REVOKE
LICENSE, IMPOSE FINE, 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 Statement of Charges, 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 Respondents.

A. **Preferred Financial Group, Inc. (Respondent Preferred Financial)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker on May 15, 1998, and continues to be licensed to date. Respondent Preferred Financial is licensed to conduct the business of a mortgage broker at the following location:

4800 Pointes Drive
Mukilteo, Washington 98275

¹ RCW 19.146 (2006)

1 the cost of the investigation. The investigation charge will be calculated at the rate of forty-eight dollars (\$48) per
2 hour that each staff person devoted to the investigation.

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

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


- 8 **4.1** Respondents Preferred Financial Group, Inc. and Edward Hartounian cease and desist from conducting the
9 business of a mortgage broker;
- 10 **4.2** Respondent Preferred Financial Group, Inc.'s license to conduct the business of a mortgage broker be
11 revoked;
- 12 **4.3** Respondents Preferred Financial Group, Inc. and Edward Hartounian jointly and severally pay a fine which
13 as of the date of this Statement of Charges totals \$1,100; and
- 14 **4.4** Respondents Community Home Lending Inc. and Curtis Dean Orvik jointly and severally pay an
15 investigation fee which as of the date of this Statement of Charges totals \$168 calculated at \$48 per hour
16 for the three and a half (3.5) staff hours devoted to the investigation.

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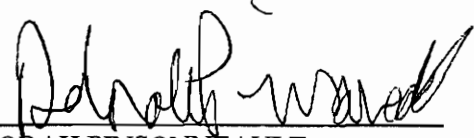
1 **V. AUTHORITY AND PROCEDURE**

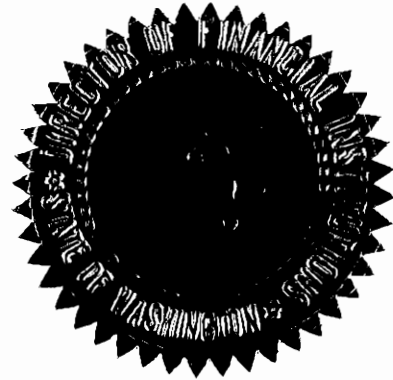
2 This Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Revoke
3 License, Impose Fine, and Collect Investigation Fee (Statement of Charges) is entered pursuant to the
4 provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to
5 the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written
6 request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY
7 FOR HEARING accompanying this Statement of Charges.

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9 Dated this 23rd day of September, 2009.

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11 _____
12 DEBORAH BORTNER
13 Director
14 Division of Consumer Services
15 Department of Financial Institutions

16 Presented by:

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19 DEBORAH PINSONNEAULT
20 Financial Legal Examiner



21 Approved by:

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24 JAMES R. BRUSSELBACK
25 Enforcement Chief

1 **1.3 Surety Bond Cancellation.** On August 4, 2009, the Department received notice from Hartford Fire
2 Insurance Company that Respondent Preferred Financial's surety bond would be cancelled, effective September
3 7, 2009. To date, Respondents have failed to provide the required surety bond.

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

5 **2.1 Requirement to Maintain Surety Bond.** Based on the Factual Allegations set forth in Section I
6 above, Respondents are in apparent violation of RCW 19.146.205(4)(a) and WAC 208-660-175(1) for failing to
7 file and maintain a surety bond with the Department.

8 **III. AUTHORITY TO ISSUE TEMPORARY ORDER TO CEASE AND DESIST**

9 **3.1 Authority to Issue Temporary Order to Cease and Desist.** Pursuant to RCW 19.146.227, the
10 Director is authorized to issue a temporary order to cease and desist whenever the Director determines that the
11 public is likely to be substantially injured by delay in issuing a cease and desist order. Based on the Factual
12 Findings and Grounds for Entry of Order set forth above, Respondent Preferred Financial does not maintain the
13 required surety bond, and the public is likely to be substantially injured by the lack of said surety bond
14 coverage.

15 **IV. ORDER**

16 Based on the above Factual Findings, Grounds for Entry of Order, and Authority to Issue Temporary
17 Order to Cease and Desist, and pursuant to RCW 19.146.227, the Director determines that the public is likely to
18 be substantially harmed by a delay in entering a cease and desist order. Therefore, the Director **ORDERS** that:

19 **4.1** Respondents shall immediately cease and desist from participating in the conduct of the affairs of any
20 mortgage broker subject to licensure by the Director, in any manner, specifically including, but not limited to
21 originating any residential mortgage loan, assisting with the origination of any residential mortgage loan, and
22 holding out as able to assist any person with applying for or obtaining any residential mortgage loan.

23 **4.2** This order shall take effect immediately and shall remain in effect unless set aside, limited, or
24 suspended in writing by an authorized court.

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1 **NOTICE**

2 PURSUANT TO CHAPTER 19.146 RCW, YOU ARE ENTITLED TO A HEARING WITHIN 14 DAYS
3 OF REQUEST TO DETERMINE WHETHER THIS ORDER SHALL BECOME PERMANENT. IF YOU
4 DESIRE A HEARING, THEN YOU MUST RETURN THE ATTACHED APPLICATION FOR
5 ADJUDICATIVE HEARING INCORPORATED HEREIN BY THIS REFERENCE. FAILURE TO
6 COMPLETE AND RETURN THE APPLICATION FOR ADJUDICATIVE HEARING FORM SO THAT IT IS
7 RECEIVED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN TWENTY (20) DAYS OF
8 THE DATE THAT THIS ORDER WAS SERVED ON YOU WILL CONSTITUTE A DEFAULT AND WILL
9 RESULT IN THE LOSS OF YOUR RIGHT TO A HEARING. SERVICE ON YOU IS DEFINED AS POSTING
10 IN THE U.S. MAIL, POSTAGE PREPAID, TO YOUR LAST KNOWN ADDRESS. BE ADVISED THAT
11 DEFAULT WILL RESULT IN THIS ORDER TO CEASE AND DESIST BECOMING PERMANENT ON THE
12 TWENTY-FIRST (21ST) DAY FOLLOWING SERVICE OF THIS ORDER UPON YOU.

13 WITHIN TEN DAYS AFTER YOU HAVE BEEN SERVED WITH THIS TEMPORARY
14 ORDER TO CEASE AND DESIST, YOU MAY APPLY TO THE SUPERIOR COURT IN THE
15 COUNTY OF YOUR PRINCIPAL PLACE OF BUSINESS FOR AN INJUNCTION SETTING
16 ASIDE, LIMITING, OR SUSPENDING THIS ORDER PENDING THE COMPLETION OF THE
17 ADMINISTRATIVE PROCEEDINGS PURSUANT TO THIS NOTICE.

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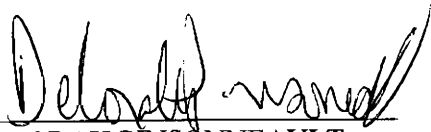
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DATED this ^{2nd} 20 day of September, 2009.



DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

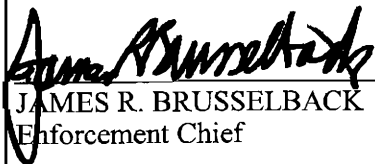
Presented by:



DEBORAH PINSONNEAULT
Financial Legal Examiner



Approved by:


JAMES R. BRUSSELBACK
Enforcement Chief