

ORDER SUMMARY – Case Number: C-09-353

Name(s): Touchstone Financial Services and Stephen Montani

Order Number: C-09-353-12-FO02

Effective Date: August 8, 2012

License Number: Touchstone Financial STAR: 20732
Touchstone Financial NMLS: 116793

Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)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: Revoke MB of Touchstone Financial

Not Apply Until: N/A

Not Eligible Until: N/A

Prohibition/Ban Until: N/A

Investigation Costs	\$105.60	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Fine	\$3,000	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Assessment(s)	N/A	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	N/A	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	N/A	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 DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

TOUCHSTONE FINANCIAL SERVICES, INC.
d/b/a TOUCHSTONE MORTGAGE COMPANY and
STEPHEN MONTANI, President, CEO, and
Designated Broker,

Respondents.

NO. C-09-353-12-FO02

FINAL DECISION AND ORDER ON
PETITION FOR REVIEW

COMES NOW, the Director ("Director") of the Washington State Department of Financial Institutions ("Department"), SCOTT JARVIS, pursuant to the Petition for Review ("Petition for Review") of Respondents, TOUCHSTONE FINANCIAL SERVICES, INC. d/b/a TOUCHSTONE MORTGAGE COMPANY ("Touchstone") and STEPHEN MONTANI ("Montani"), the Initial Order on Motion for Summary Judgment dated November 12, 2010 ("Summary Judgment Order") of Assistant Deputy Administrative Law Judge Gina L. Hale ("ALJ Hale"), following a Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Revoke License, Impose Fine, and Collect Investigation Fee dated September 23, 2009 ("Statement of Charges").

1.0 Record Presented. The record before the Director includes (without limitation) the entire record from the Office of Administrative Hearings ("OAH") and documents presented on Petition for Review, as follows:

- 1.1 Statement of Charges;
- 1.2 Recording of Hearing dated March 18, 2010;
- 1.3 Recording of Hearing dated June 11, 2010;
- 1.4 The Interim Order on Discovery Motion dated July 23, 2010;

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- 1.5 The Department’s Motion for Summary Judgment;
- 1.6 The Answer to the Department’s Motion for Summary Judgment, dated June 23, 2010;
- 1.7 The Summary Judgment Order;
- 1.8 Letter from Charles E. Clark, Assistant Attorney General, re: Discovery dated June 8, 2010, addressed to Administrative Law Judge Gina Hale (“ALJ Hale”);
- 1.9 The undated, handwritten letter of Montani re: Discovery addressed to ALJ Hale;
- 1.10 The Notice of Pre-Hearing Conference (Discovery) dated May 28, 2010;
- 1.11 The Temporary Order to Cease and Desist;
- 1.12 The Petition for Review; and
- 1.13 The Department’s Reply to Petition for Review.

2.0 Director’s Considerations. The Director has reviewed Touchstone’s and Montani’s Petition for Review and finds that it is without merit.

2.1 Petition for Review Is Deficient under WAC 10-08-211(3). The Director first of all notes that the Petition for Review is legally deficient under Section 10-08-211(3) of the Washington Administrative Code, because it fails to specify the portions of the Summary Judgment Order of ALJ Hale to which exception is taken.¹ Moreover, the Director agrees that Montani and Touchstone have made assertions in the Petition for Review that lack evidence in the record. WAC 10-08-211(3) requires that a petition for review be supported only by evidence that is in the record on review from the OAH. The Director agrees with counsel for the Division of Consumer Services that, but for the slightly revised caption and revised date and signature, the Petition for Review appears to be identical to Respondent’s Answer to the Department Motion for Summary Judgment dated June 23, 2010. As the Director further

¹ WAC 10-08-211(3) declares: “The petition for review shall specify the portions of the initial order to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition.”

1 notes below, all of the arguments in Montani's and Touchstone's Petition for Review (which was
2 essentially the same as its Answer to Motion for Summary Judgment) were already properly addressed by
3 ALJ Hale in her Summary Judgment Order and Interim Order on Discovery Motion.

4 2.2 ALJ Hale's Discovery Ruling: Attorney-Client Privilege. ALJ Hale properly denied
5 Montani's and Touchstone's Motion for Discovery in her Interim Order on Discovery Motion. Prior to
6 their Motion for Discovery, Montani and Touchstone failed to comply with WAC 208-08-060(1),²
7 which ALJ Hale noted in her Interim Order on Discovery. Despite this fact, the record shows that the
8 Division of Consumer Services did respond to Montani's request for certain documents regarding
9 Touchstone. However, as the Interim Order on Discovery indicates and approves, some information was
10 redacted on account of attorney-client privilege, which the Department was within its right to assert. The
11 Division of Consumer Services properly refused Montani's renewed request for such privileged
12 information. When Montani and Touchstone subsequently brought a motion to try to compel the
13 disclosure of such privileged information, ALJ Hale properly denied the request for an un-redacted copy
14 of Respondents' case file. Accordingly, the Director will not disturb ALJ Hale's ruling on Petition for
15 Review.
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17 2.3 ALJ Hale's Discovery Ruling re: *Stillwater Mortgage File*. Montani and Touchstone also
18 requested the case file from an unrelated case called *Stillwater Mortgage* that had recently been settled,
19 and the Division of Consumer Services refused on the grounds that such requested information was not
20 likely to lead to the discovery of admissible evidence. Specifically, the Division of Consumer Services
21 contended that evidence of how the Department settled an entirely different case would not be admissible
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24 ² WAC 208-08-060(1), which applies to all discovery in administrative cases before the Department, states: "Unless discovery is included in the
25 prehearing order as provided in WAC 208-08-110, a party wishing to make discovery must file a motion for discovery with the presiding officer. The party must also serve the discovery motion on all other parties to the proceeding. Any party opposing the motion must file a response with the presiding officer and the response must be served on all parties within ten calendar days after service of the motion.

1 and would be excluded on the ground that such information was irrelevant – especially for the purpose of
2 comparing the sanctions imposed in *Stillwater Mortgage* as being different than those sought in the
3 present case. In the absence of a statutory requirement, the Department and its Division of Consumer
4 Services need not fashion identical remedies in each case.³ Accordingly, ALJ Hale denied Montani’s and
5 Touchstone’s request the *Stillwater Mortgage* case file. The Director will not disturb on Petition for
6 Review this additional discovery ruling by ALJ Hale.

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8 2.4 ALJ Hale’s Findings Are Supported by the Record. There is no issue of material fact that
9 Montani and Touchstone failed to maintain a surety bond in violation of RCW 19.146.205(4)(a) and
10 WAC 208-660-175, as set forth in the Summary Judgment Order of ALJ Hale.

11 2.5 Sanctions Imposed in Summary Judgment Order Are Appropriate. The fine sought by the
12 Division of Consumer Services (\$3,000) is appropriate and authorized by the Mortgage Broker Practices
13 Act.⁴ Additionally, the investigative fee sought (\$105.60) is reasonable, when calculated at the rate of
14 \$48 per hour multiplied by 2.2 hours of investigation by the Division of Consumers Services.

15 3.0 Findings of Fact. The Director hereby re-affirms and incorporates herein by reference all of the
16 Findings of Fact of ALJ Hale in her Summary Judgment Order.

17 4.0 Conclusions of Law. The Director hereby re-affirms and incorporates herein by this reference all
18 of the Conclusions of Law of ALJ Hale in her Summary Judgment Order. The Director further adopts and
19 incorporates herein by this reference the Conclusions of Law set forth above in Section 2.0 of this Final
20 Decision and Order.
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24 ³ *Stahl v. University of Washington*, 39 Wash.App. 50, 55-56, 691 P.2d 972 (1984).

25 ⁴ RCW 19.146.220(4) (authority for order to cease and desist); RCW 19.146.220(2)(c) and (e) (authority to revoke mortgage broker license); RCW 19.146.220(2) and (3)(a) and WAC 208-660-530-530(6) (authority to impose fine); and 19.146.228(2), WAC 208-660-520(9), and WAC 208-660-550(4) (authority for imposing investigative fee).

1 5.0 Final Decision and Order. Having made Findings of Fact and Conclusions of Law as set forth
2 above, NOW, THEREFORE,

3 IT IS HEREBY ORDERED:

4 5.1 The *grant* of Division of Consumer Services Motion for Summary Judgment is hereby
5 affirmed.

6 5.2 The *denial* of Respondents' Motion to Dismiss the Department's Motion for Summary
7 Judgment is hereby affirmed.

8 5.3 The license of Respondent TOUCHSTONE FINANCIAL SERVICES, INC., to conduct
9 the business of Mortgage Broker in Washington State is hereby revoked.

10 5.4 Respondents, TOUCHSTONE FINANCIAL SERVICES, INC., and STEPHEN
11 MONTANI, are each prohibited from participation in the conduct of the affairs of any mortgage broker
12 subject to licensure by the Washington State Department of Financial Institutions in the absence of
13 Mortgage Broker License or Loan Originator License, as applicable. If, after the date of this Final
14 Decision and Order, Respondent, TOUCHSTONE FINANCIAL SERVICES, INC., or Respondent,
15 STEPHEN MONTANI, seeks licensure as a mortgage broker or loan originator by the Washington
16 State Department of Financial Institutions, each of them shall be subject to all requirements of a
17 license applicant.
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19 5.5 Respondents, TOUCHSTONE FINANCIAL SERVICES, INC., and STEPHEN
20 MONTANI, shall jointly and severally pay to WASHINGTON STATE DEPARTMENT OF
21 FINANCIAL INSTITUTIONS a fine in the amount of Three Thousand Dollars (\$3,000.00).
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23 5.6 Respondents, TOUCHSTONE FINANCIAL SERVICES, INC., and STEPHEN
24 MONTANI, shall jointly and severally pay to WASHINGTON STATE DEPARTMENT OF
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1 FINANCIAL INSTITUTIONS the amount of One Hundred Five Dollars and Sixty Cents (\$105.60) as
2 and for an investigative fee.

3 6.0 Reconsideration. Pursuant to RCW 34.05.470, Respondents have the right to file a Petition
4 for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be
5 filed in the Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road
6 SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-
7 1200, within ten (10) days of service of the Final Order upon Respondents. The Petition for
8 Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a
9 prerequisite for seeking judicial review in this matter. A timely Petition for Reconsideration is deemed
10 denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition
11 or (b) serve the parties with a written notice specifying the date by which it will act on a petition.

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13 7.0 Stay of Order. The Director's designee has determined not to consider a Petition to Stay
14 the effectiveness of this order. Any such requests should be made in connection with a Petition for
15 Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

16 8.0 Judicial Review. Respondents have the right to petition the superior court for judicial
17 review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing
18 a Petition for Judicial Review, see RCW 34.05.510 and sections following.

19 9.0 Non-compliance with Order. If you do not comply with the terms of this order, the Department
20 may seek its enforcement by the Office of Attorney General to include the collection of the fines, fees and
21 restitution imposed herein.

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1 10.0 Service. For purposes of filing a Petition for Reconsideration or a Petition for Judicial
2 Review, service is effective upon deposit of this order in the U.S. mail, declaration of service attached
3 hereto.

4 DATED this 8th day of August, 2012.



6 STATE OF WASHINGTON
7 DEPARTMENT OF FINANCIAL INSTITUTIONS
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9 SCOTT JARVIS, Director

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

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IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

NO. C-09-353-09-SC01

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TOUCHSTONE FINANCIAL SERVICES,
INC. d/b/a TOUCHSTONE MORTGAGE
COMPANY and STEPHEN MONTANI,
President, CEO, and Designated Broker,

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO CEASE AND DESIST, REVOKE
LICENSE, IMPOSE FINE, AND COLLECT
INVESTIGATION FEE

Respondents.

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:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. **Touchstone Financial Services, Inc. (Respondent Touchstone)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker on August 23, 1999, and continues to be licensed to date. Respondent Touchstone is licensed to conduct the business of a mortgage broker at the following location:

10626 NE Gilsan Street
Portland, Oregon 97220

¹ RCW 19.146 (2006)

1 B. **Stephen Montani (Respondent Montani)** is President, CEO, and Designated Broker of
2 Respondent Touchstone. Respondent Montani was named Designated Broker of Respondent Touchstone on
3 August 23, 1999, and continues as Designated Broker to date.

4 **1.2 Failure to Maintain Bond.** On June 22, 2009, the Department received notice from CBIC Insurance
5 that Respondent Touchstone's surety bond would be cancelled. Respondent Touchstone's surety bond
6 cancelled effective July 21, 2009. To date, Respondents have failed to provide the required surety bond.

7 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
8 Respondents continues to date.

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II. GROUNDS FOR ENTRY OF ORDER

10 **2.1 Requirement to Maintain Surety Bond.** Based on the Factual Allegations set forth in Section I
11 above, Respondents are in apparent violation of RCW 19.146.205(4)(a) and WAC 208-660-175(1) for failing to
12 file and maintain a surety bond with the Department.

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III. AUTHORITY TO IMPOSE SANCTIONS

14 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 19.146.220(4), the Director may
15 issue orders directing a licensee, its employee or loan originator, or other person subject to the Act to cease and
16 desist from conducting business.

17 **3.2 Authority to Revoke License.** Pursuant to RCW 19.146.220(2)(c) the Director may revoke a license
18 failure to pay a fee required by the Director or maintain the required bond, or any violation of the Act.

19 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2) and (3) and WAC 208-660-530(6), the
20 Director may impose fines on a licensee, employee or loan originator of the licensee, or other person subject to
21 the Act for any violations of RCW 19.146.200, or any violation of the Act.

22 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-520(9) and
23 WAC 208-660-550(4) upon completion of any investigation of the books and records of a licensee or other person
24 subject to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover
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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 Touchstone Financial Services, Inc. and Stephen Montani cease and desist from conducting
9 the business of a mortgage broker;
- 10 **4.2** Respondent Touchstone Financial Services, Inc.'s license to conduct the business of a mortgage broker
11 be revoked;
- 12 **4.3** Respondents Touchstone Financial Services, Inc. and Stephen Montani jointly and severally pay a fine
13 which as of the date of this Statement of Charges totals \$3,000; and
- 14 **4.4** Respondents Touchstone Financial Services, Inc. jointly and severally pay an investigation fee which as of
15 the date of this Statement of Charges totals \$105.60 calculated at \$48 per hour for the two and one-fifth
16 (2.2) 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.

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

13 Presented by:

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17 DEBORAH PINSONNEAULT
18 Financial Legal Examiner



19 Approved by:

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21 _____
22 JAMES R. BRUSSELBACK
23 Enforcement Chief