

ORDER SUMMARY – Case Number: C-09-393

Name(s): Law Offices of Stephen L Burns & Associates
Stephen Burns

Order Number: C-09-393-11-FO01

Effective Date: March 13, 2012

License Number: [NMLS: 940219] –Law Offices of Stephen Burns

[NMLS: 940090] -Stephen Burns

Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)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: None

Not Apply Until: N/A

Not Eligible Until: N/A

Prohibition/Ban Until: N/A

Investigation Costs	\$792	Due 3/13/12	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Fine	\$35,000	Due 3/13/12	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$2,500	Due 3/13/12	Paid <input type="checkbox"/> Y <input checked="" 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:

LAW OFFICES OF STEPHEN L. BURNS
& ASSOCIATES, P.C., and STEPHEN L.
BURNS, President and Owner,

Respondents.

OAH No. 2011-DFI-0024

DFI NO. C-09-393-11-F01

FINAL DECISION & ORDER

THIS MATTER comes now before SCOTT JARVIS, Director (“Director”) of the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS (“Department”), pursuant to the Findings of Fact, Conclusions of Law, and Initial Order Granting Summary Judgment dated February 10, 2012, (“Initial Order”), against Respondents, LAW OFFICES OF STEPHEN L. BURNS & ASSOCIATES, P.C., and STEPHEN L. BURNS (“Respondents”), on the Petition for Review, dated March 1, 2012 (“Petition for Review”), brought by Victor Minjares, Assistant Attorney General and counsel of record for the Department’s Division of Consumer Services (“Division”), from Initial Order by Administrative Law Judge Thomas P. Rack (“ALJ Rack”); and the Director having taken into consideration the entire record on review, including, without limitation, all pleadings, affidavits and recorded oral and written argument before ALJ Rack, the Initial Order, and the Petition for Review, the latter of which is uncontested (collectively, the “Record on Review”);

NOW, THEREFORE, the Director issues the following Final Decision and Order:

FINAL DECISION & ORDER

IN RE: LAW OFFICES OF STEPHEN L. BURNS & ASSOCIATES, P.C. & STEPHEN L. BURNS

DFI NO. C-09-393-11-F01

Page 1

1.0 REFERENCES & NOTICE OF CORRECTIONS

References herein to ALJ Rack's Conclusions of Law (which ALJ Rack calls "Findings at Law") are denoted "COL."

The Director takes notice of certain proposed errata corrections to the Petition for Review submitted by Division's counsel, Assistant Attorney General, Victor Minjares. The Director accepts these corrections and treats the corrected version of the Petition for Review as the one being deliberated.

2.0 DIRECTOR'S CONSIDERATIONS

The Initial Order was granted pursuant to an unopposed motion by the Division for summary judgment. The Respondents have not contested the Petition for Review. There are no disputed material facts in this case. The Initial Order correctly reflects the material facts.

However, the Petition for Review contends that ALJ Rack, in his Initial Order, misinterpreted the plain language use of the word "or" as it appears in the Mortgage Broker Practices Act ("Act"), at RCW 19.146.220(2), which states, in pertinent part, that for various violations of the Act, the Director may "...impose fines *or* order restitution" [Emphasis added.] ALJ Rack described the use of the word "or" in the statute as "the disjunctive "or," and wrote that its use "makes it clear the Director need make an election of which remedy he/she seeks to pursue." [COL 13] The Petition for Review contends that ALJ Rack failed to properly read the plain language of the statute to comprehend that "or" was used in its *inclusive* disjunctive sense (allowing one or more choices by the Director), not in the *exclusive* disjunctive (allowing one and only one choice), and incorrectly assumed "or" to mean the latter. The Petition

for Review contends that this construction of RCW 19.146.220(2) by ALJ Rack is inconsistent with the plain language of the statute, and should be corrected.

The Director concurs.

In reviewing the Initial Order, the Director finds that ALJ Rack properly noted that the use of “or” is presumed to be disjunctive. However, it appears as if ALJ Rack also assumed that the *least probable type* of disjunctive, the “exclusive disjunctive,” was intended by the Legislature in its enactment of RCW 19.146.220(2), even though the context makes it plain that the *inclusive* disjunctive form of “or” was meant.

We agree with the Division in its Petition for Review that ALJ Rack’s use of “or” would be entirely inconsistent with the plain meaning of the statute. Because the language of RCW 19.146.220(2) is plain and unambiguous, legislative intent is not an issue.¹ We could stop here. However, under the circumstances, we agree with the Division that it is fitting to declare here with more specificity the reasons why the Act (and other statutes administered by the Department) – which employ the word “or” in the *inclusive* disjunctive sense – should not be interpreted in the manner ALJ Rack did in his Initial Order.

When used to combine two or more clauses, the word “or” can be disjunctive in either its inclusive or exclusive sense, depending on the context. If two or more options do not exclude each other, it is always understood that “or” is used in the logical disjunctive, or inclusive disjunctive sense – it allows for one or more options or choices to be selected.² For example, as the Petition for Review wisely observes, an actor may say, “I will consider my career a success if

¹ *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004).

² “The word ‘or’ has two different senses, one of which is clearly intended in the statement, ‘Premiums will be waived in the event of sickness or unemployment.’ The intention here is obviously that premiums are waived not only for sick persons and for unemployed persons, but also for persons who are both sick and unemployed. This sense of the word ‘or’ is called weak or inclusive.” Irving Copi, *Symbolic Logic Fifth Edition*, New York, Macmillan Publishing Co., Inc. 1979.

I win an Oscar, a Golden Globe, or a Tony.” But it is obvious that an actor whose ambition is to win one of those awards will not consider herself a failure if she ends up winning two, or even all three awards! The context in this example makes it clear that the meaning of “or” can include selection of not only one, but one or more options. This is a common usage of “or” in the English language. Alternatively, as the Petition for Review also observes, when the items in a list necessarily exclude each other, then “or” in its exclusive disjunctive meaning is the only one that makes sense. For example, as the Petition for Review has noted, if you are asked whether you want to see the eight o’clock performance of “Cats” or “Phantom of the Opera” that evening, you can pick one show or the other, but not both, because you can only be in one place at one time.³

In this case, imposing a regulatory fine is not mutually exclusive with the act of ordering that restitution be made to victimized consumers. Since the remedies are not mutually exclusive, the use of “or” is unambiguous — it is used in its inclusive disjunctive sense: one, or the other, or both. Therefore, as used in RCW 19.146.220(2), the Director determines that “or” clearly allows for a fine, or restitution, *or* both a fine *and* restitution to be imposed. The Director may choose to impose a fine, and, if, as here, there are victimized consumers who suffered an actual loss, the Director may also elect to order that restitution be made to those consumers in addition to the fine. This is the same standard that was required of ALJ Rack in fashioning an Initial Order.

The Director also takes this opportunity to note that the cases ALJ Rack cites in COL 11 to support his assumption that “or” as used in a list of items is always meant in an exclusive disjunction sense, do not support that proposition. His cited appellate opinions do not support

³ “A different sense of ‘or’ is intended when a restaurant lists ‘tea or coffee’ on its table d’hôte menu, meaning that for the stated price of the meal the customer can have one or the other, but not both. This second sense of ‘or’ is called strong or exclusive. Where precision is at a premium and the exclusive sense of ‘or’ is intended, the phrase ‘but not both’ is often added.” *Id.*

that proposition. Rather, they support the proposition that “or” almost never is used as a substitute for the mandatory conjunctive “and.” The word “and” as used in statutes is typically a logical conjunction. The statement “A and B” is true if and only if A is true and B is true; the statement “A and B” is false if either A, or B, or both, are false.⁴ ALJ Rack appears to have confused the cases distinguishing “or” as distinct from the word “and” when he was faced with the question of whether exclusive disjunction or inclusive disjunction was intended by the Legislature when it used in RCW 19.146.220(2). In this regard, the two cases cited by ALJ Rack discuss attempts to interpret the use of the word “or” (one or more in a list of possible options) as the mandatory conjunctive “and” (all of the choices in a list must be present). The first case cited does not support ALJ Rack’s legal conclusion regarding interpretation of “or” in RCW 19.146.220(2).⁵ The second case cited by the hearing officer involved a similar attempt to interpret an “or” as a mandatory conjunctive.⁶ ALJ Rack even cites two statutory and rulemaking drafting guides for this erroneous proposition,⁷ suggesting erroneously that if the Legislature intended otherwise, it could have used the term “and/or” in drafting RCW

⁴ Copi, *Symbolic Logic Fifth Edition*, at pp. 8-9.

⁵ *Tesoro Refining & Marketing Co. v. Dep't of Revenue*, 164 Wn.2d 310, 190 P.3d 28 (2008); cited in COL 10 and 11 of Initial Order. In that case, the Tesoro Refinery challenged payment of a tax owed by those controlling refinery gas, a hazardous substance. “Control” was defined as having “the power to sell or use” the gas. Tesoro Refinery used refinery gas but did not sell it, so it argued that the word “or” should be interpreted as a mandatory conjunctive: i.e., as a statutory requirement that for the power to use the gas, but also the power to sell it. Using the gas would not suffice to make it taxable, the refinery argued. The Tesoro court rejected the refinery’s argument that “or” should be interpreted as a mandatory conjunctive. However, there is nothing in the opinion helpful to the hearing officer’s interpretation of “or” as an exclusive disjunctive rather than an inclusive disjunctive.

⁶ *Childers v. Childers*, 89 Wn.2d 592, 575 P.2d 201 (1978); cited in COL 11 of Initial Order. In *Childers*, a father was ordered to provide support to his children while they attended college. The father argued that the “or” in the statute, which allowed support to be ordered to a “minor or dependent child” should be interpreted to bar support orders for children once past age eighteen, even if they were still dependent. The court rejected the father’s argument that “or” should be interpreted as a mandatory conjunctive. Again, like *Tesoro*, there is nothing in the *Childers* opinion about interpreting “or” as either an exclusive or inclusive disjunctive.

⁷ However, like *Tesoro* (Footnote 5) and *Childers* (Footnote 6), neither addresses how to decide whether “or” is being used as an inclusive disjunctive or an exclusive disjunctive. See COL 11, citing Washington Office of the Code Reviser, *Bill Drafting Guide 2011* and *Instructions on Style for the Washington Administrative Code (WAC)*, 2009. This is probably because the plain language of the statute makes the distinction clear.

19.146.220(2).⁸ However, the use of “and/or” is greatly disfavored by legal scholars and most courts⁹ and is specifically avoided by the Office of Code Reviser of the Washington State Legislature in its act as official drafter of bills.¹⁰

The Division’s *inclusive disjunctive* (or *logical disjunctive*) interpretation of “or” in RCW 19.146.220(2) is consistent not just with common English usage; it is also in harmony with the legislative intent of the Act. Application of well-settled principles of statutory construction requires that RCW 19.146.220(2) must be construed by reading it in its entirety and considered in relation with its fellow statutes.¹¹ The Act is both remedial in purpose and intended to protect consumers.¹² Therefore, any ambiguity must be construed in light of its curative and consumer protection purpose.¹³

Based upon the above, the Director finds that ALJ Rack erred when he ended his legal analysis with the observation that “or” is disjunctive, and assumed, *sub silencio*, that “disjunctive” always meant “exclusive disjunction.” The *inclusive disjunctive* (*logical*

⁸ See COL 12 of Initial Order.

⁹ For example, the Wisconsin Supreme Court referred to “and/or” as “that befuddling, nameless thing, that Janus-faced verbal monstrosity, neither word nor phrase, the child of a brain of someone too lazy or too dull to know what he did mean.” *Employers Mutual Liability Insurance Co. v. Tollefson*, 263 N.W. 376 at 377 (1935). The Kentucky Supreme Court, in an oft-quoted passage, referred to “and/or” as a “much-condemned conjunctive-disjunctive crutch of sloppy thinkers.” *Raine v. Drasin*, 621 S.W. 2d 895, 905 (Ky. 1981). See also *Chicago Manual of Style, 16th Ed.* (Chicago: University of Chicago Press, 2010), Rule 5.220 at p. 266 (“avoid this Janus-faced term”); William Strunk, Jr. & E.B. White, *Elements of Style, 4th Ed.* (New York: Longman, 1999) at p. 40 (“And/or. A device, or shortcut, that damages a sentence and often leads to confusion or ambiguity”); Bryan A. Garner (with Jeff Newman and Tiger Jackson), *The Redbook: A Manual on Legal Style* (St Paul, MN: West Group, 2002), Rule 1.80 at p. 43 (“and/or ... is especially unfit for legal writing because it is inherently ambiguous”); Robert C Dick, *Legal Drafting in Plain Language, 3rd Ed.* (Scarborough, ON: Carswell, 1995), Rule 10 at pp. 107-11 (“Never use ‘and/or.’ ... It has been promulgated largely by those who either have not taken the trouble to decide, or cannot make up their minds, which of the two words they mean.”).

¹⁰ Washington Office of the Code Reviser, *Bill Drafting Guide 2009*, p. 62.

¹¹ *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

¹² The Act, at RCW 19.146.005, declares: “It is the intent of the legislature to establish a state system of licensure in addition to rules of practice and conduct of mortgage brokers and loan originators to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community.”

¹³ *Carlsen v. Global Client Solutions, L.L.C.*, 171 Wn.2d 486, 497-8, 256 P.3d 321 (2011) (a remedial statute enacted to stem unfair and deceptive practices should be construed liberally in favor of protecting consumers).

disjunctive) usage of “or” in RCW 19.146.220(2) is unambiguous and clearly reflects the plain language of the statute. It is also consistent with the overall legislative intent and remedial purpose of the Act.

Under ALJ Rack’s strained interpretation of RCW 19.146.220(2), one can easily imagine situations where the Division would have to forgo \$100,000 in fines to impose an order of \$500 in restitution to a single consumer. Such an interpretation would either harm the consumer, or alternatively, provide a windfall to the offending company for causing harm to the consumer because the Division would have to forgo a substantial fine to help the consumer. ALJ Rack’s interpretation of “or,” if applied to the very cases he erroneously relies upon for support, would result in a refinery paying no taxes if it both used and sold gas (*Tesoro*), and prevent a support order in cases where a child was both a minor and a dependent (*Childers*). In this case, such an interpretation of “or” would be incompatible with the Legislature’s remedial intent (1) to bar residential mortgage transactions by unlicensed brokers, (2) to preserve public confidence in the system, and (3) to promote honesty towards and fair dealing with Washington citizens.

3.0 FINAL DECISION & ORDER

For all of the reasons set forth in Section 2.0 above, it is incumbent upon the Director to modify the language in the Initial Order to conform with the plain language of RCW 19.146.220(2) and the legislative intent of the Act.

NOW, THEREFORE, the Director makes the following Final Decision and Order and finds that the errors of law in the Initial Order be corrected,¹⁴ amended, and reflected in this Final Decision and Order, as follows:

¹⁴ In the interests of brevity, non-legal errors of grammatical, tense agreement, and internal consistency that would be subject to *munc pro tunc* correction are made and underlined in the text, but not discussed herein.

3.1 The first full paragraph of Page 3 of the Initial Order (part of ALJ Rack's "Summary"), is hereby modified to read, as follows:

"Based upon the aforementioned statutes and administrative rules, Respondents are fined thirty-five thousand dollars (\$35,000.00). In addition, Respondents are ordered to cease and desist from conducting mortgage broker related activities in the State of Washington without being licensed. Respondents are further prohibited from participation in the conduct of the affairs of a licensed mortgage broker, any officer, principal, employee, or loan originator of a licensed mortgage broker, or any person subject to licensing under the Mortgage Broker Practices Act for a period of five years. Respondents are ordered to pay restitution totaling two thousand five hundred dollars (\$2,500.00) to borrowers L.T. and T.T. (see Exhibit D to the Declaration of Robert E. Jones) under the supervision of the Department. Finally, Respondents are ordered to pay an investigation fee of seven hundred and ninety-two dollars (\$792.00) to the Department for the costs incurred in conducting its investigation."

3.2 COL 9, at Page 7 of the Initial Order, is hereby modified to read, as follows:

"9. The Department may impose fines and order restitution under the unambiguous language of RCW 19.146.220(2)."

3.3 COL 11, at Page 7 of the Initial Order, is hereby modified to read, as follows:

"11. As a default rule, the word 'or' does not mean 'and' unless the legislative intent clearly indicates to the contrary. *Tesoro*, 164 Wn.2d at 319. The term 'or' is presumed to be used in the disjunctive unless the legislative intent is clearly contrary. *Childers v. Childers*, 89 Wn.2d 592, 595, 575 P.2d 201,204 (1978). As further indication that the term 'or' is intended to be used in the disjunctive, the Washington Office of the Code Reviser, in the *Bill Drafting Guide 2011* and *Instructions On Style For The Washington Administrative Code (WAC) 2009*, recommends using '. . . a single 'or' to indicate the disjunctive and a single 'and' to indicate the conjunctive' *Guide* at Part IV,(1)(c)(ii); Instructions at (1)(c)(ii). 'Disjunctive' has two types: inclusive disjunction (sometimes called logical disjunction), and exclusive disjunction. When used to combine two or more clauses, the word 'or' can be disjunctive in either its inclusive or exclusive sense,

depending on the context. When two or more options do not exclude each other, it is understood that ‘or’ is used in the logical disjunctive, or inclusive disjunctive sense – it allows for one or more options or choices to be selected. When the clauses necessarily exclude each other, i.e., both cannot be true at the same time – then ‘or’ in its exclusive disjunctive meaning is the only one that makes sense. In the latter instance, only one option may be selected.”

3.4 COL 12, at Page 7 of the Initial Order, is hereby modified to read, as follows:

“12. In drafting RCW 19.146.220, the legislature intended the Director to also have the power and authority to impose fines on an employee, loan originator, or agents of the licensee [RCW 19.146.220(3)]; issue cease and desist orders [RCW 19.146.220(4)]; and remove from office or prohibit from industry [RCW 19.146.220(5)]. Each of these penalties is set forth in separate subsections. An interpretation of ‘or’ in the exclusive disjunctive is also rejected because it would be incompatible with the Legislature’s intent to bar mortgage transactions by unlicensed brokers involving residential property, to preserve public confidence in the system, and to promote honesty towards and fair dealing with Washington citizens.”

3.5 COL 13, at Pages 7 and 8 of the Initial Order, is hereby modified to read, as follows:

“13. Under RCW 19.146.220(2), imposing a regulatory fine is not mutually exclusive with ordering that restitution be made to victimized consumers. Again, since the remedies are not mutually exclusive, the use of ‘or’ in that statute is unambiguous – it is used in its *inclusive disjunctive* sense: one, or the other, or both. Therefore, as used in RCW 19.146.220(2), ‘or’ clearly allows for a fine, or restitution, or both a fine and restitution to be imposed. Therefore, here the Director can choose to impose a fine, and, since there are two victimized consumers who jointly suffered an actual loss, the Director may also elect to order that restitution be made to those consumers in addition to the fine, thereby making them whole. This is consistent with common English usage, the plain language of the statute, and the legislative intent of the Mortgage Broker Practices Act (RCW Ch. 19.146). ‘It is the intent of the legislature to establish a state system of licensure in addition to rules of practice and conduct of mortgage brokers and loan

originators to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community.’ RCW 19.146.005. The use of the inclusive disjunctive ‘or’ by the legislature makes it clear the Director need not make an election of only one remedy to pursue. Because the legislature specified other penalties in separate subsections within the statute, it indicated its acknowledgment of the separate powers of the Director and his ability to impose those sanctions. Further, the legislature recognized the Director needed the power to remove from office and prohibit from industry, if the circumstances warranted such remedies. RCW 19.146.220(5).”

3.6 COL 14, at Page 8 of the Initial Order, is hereby modified to read, as follows:

“14. The legislative intent of the Mortgage Broker Practices Act (RCW Ch. 19.146) expresses the goal of having a statewide system to regulate the mortgage industry to promote fair dealings with citizens and preserve public confidence in the lending and real estate industries. RCW 19.146.005. Given the protection of the public as the intent expressed by the legislature, the imposition of fines and restitution under RCW 19.146.220(2) is appropriate in this circumstance as these sanctions are likely to preserve the public confidence in the industry. While imposing a restitution order upon Respondents benefits the individual harmed, that person may still seek further redress through the courts. However, this tribunal recognizes that restitution, in lieu of fines, or *vice versa*, may be the appropriate sanction in certain cases, but not in this instance.”

3.7 Except as set forth in Subsections 3.1 through 3.6 above, all other Findings of Fact and Conclusions of Law, as contained in Pages 1 through 8, inclusive, of the Initial Order, shall remain unmodified and are hereby incorporated in and made a part of this Final Decision and Order.

3.8 The Relief portion of the Initial Order, at Pages 8 and 9 of the Initial Order, is hereby modified and restated in its entirety below.

WHEREFORE, based upon the Findings of Fact and Conclusions of Law as modified and set forth in Subsections 3.1 through 3.7 above, IT IS HEREBY ORDERED:

3.8.1 The Department of Financial Institutions' Motion for Summary Judgment is GRANTED.

3.8.2 Under RCW 19.146.228 and WAC 208-660-550, Respondents, LAW OFFICES OF STEPHEN L. BURNS & ASSOCIATES, P.C., and STEPHEN L. BURNS, jointly and severally, are ordered to pay to the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS, an investigation fee of seven hundred and ninety-two dollars (\$792.00) for the cost to the Department in conducting its investigation.

3.8.3 Under RCW 19.146.220(2), Respondents, LAW OFFICES OF STEPHEN L. BURNS & ASSOCIATES, P.C., and STEPHEN L. BURNS, jointly and severally, are ordered to pay Restitution of two thousand five hundred dollars (\$2,500.00) to borrowers L.T. and T.T. (*see* Exhibit D to the Declaration of Robert E. Jones) under the supervision of the Department.

3.8.4 Under RCW 19.146.220(2), Respondents, LAW OFFICES OF STEPHEN L. BURNS & ASSOCIATES, P.C., and STEPHEN L. BURNS jointly and severally, are ordered to pay a fine to the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS in the amount of thirty-five thousand dollars (\$35,000.00).

3.8.5 Each party shall bear its own costs, expenses and attorney's fees.

3.9 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 this 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.

3.10 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.

3.11 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.

3.12 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.

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

Dated at Tumwater, Washington, on this 13th day of March, 2012.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By:



Scott Jarvis, Director

RECEIVED

FEB 15 2012

ENFORCEMENT UNIT
DIVISION OF CONSUMER SERVICES
DEPT OF FINANCIAL INSTITUTIONS

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of:

LAW OFFICES OF STEPHEN L. BURNS
& ASSOCIATES, P.C. and STEPHEN L.
BURNS, President and Owner,

Respondents.

OAH Docket No. 2011-DFI-0024

FINDINGS AT LAW, CONCLUSIONS
OF LAW AND INITIAL ORDER
GRANTING SUMMARY JUDGMENT

STATEMENT OF THE CASE

On March 3, 2011, the Department of Financial Institutions (the "Department") issued a Statement Of Charges and Notice Of Intention To Enter And Order To Cease And Desist, Prohibit From Industry, Impose Fine, Order Restitution, And Collect Investigation Fee ("Statement of Charges") alleging the Law Offices of Stephen L. Burns & Associates, P. C., and Stephen L. Burns, President and Owner ("Respondents") violated the Mortgage Broker Practices Act. The Department alleged Respondents solicited and performed or attempted to perform unlicensed mortgage modification services for approximately thirty-four (34) Washington residents. The Department also alleged Respondents failed to respond to a subpoena issued by the Department seeking information regarding the loan modification transactions.

On March 22, 2011, Respondents submitted their request for a hearing before an Administrative Law Judge.

Throughout the course of this administrative proceeding, Respondents consistently failed to provide discovery as requested by the Department.

On December 13, 2011, the Department filed its Motion For Summary Judgment. Respondents had until January 6, 2012 in which to file a response to or papers opposing the Department's summary judgment motion. Respondents did not file a timely response, instead, on January 17, 2012, filed a Declaration of Stephen L. Burns Showing Good Cause for not having complied with Discovery due date(s), and for not having filed and served Opposition papers to the DFI's Motion for Summary Judgment (sic).

In said Declaration, Mr. Burns stated, in relevant part, ". . . I do not believe I could have filed a Memorandum of Points and Authorities, supported by competent proof as

required by CR 56, that would have persuasively argued for the denial of the Motion either in its entirety, or partially.”

On January 23, 2012, a hearing was held on the Department’s summary judgment motion before Administrative Law Judge Thomas P. Rack. Assistant Attorney General Victor Minjares appeared and represented the Department. Respondents appeared through Stephen L. Burns. During this hearing, Respondents acknowledged they did not contest the Department’s summary judgment motion.

On January 25, 2012, this Tribunal sent correspondence to the counsel for the Department, with a copy to Respondent, inquiring as to whether the Director wished to impose fines or order restitution as provided for in RCW 19.146.220(2)¹. By letter dated February 2, 2012, the Department’s attorney advised that the Director declined to exercise his discretion to elect a single, exclusive remedy under RCW 19.146.220(2).

ISSUE(S)

1. Were Respondents’ unlicensed actions in conducting or initiating 34 loan modification services for Washington residents a violation of RCW 19.146.200 of the Mortgage Broker Practices Act?
2. If Respondents’ actions were in violation of RCW 19.146.200, what are the appropriate sanctions and/or remedies authorized by Washington law?

SUMMARY

1. Since Respondents did not contest the Department’s summary judgment motion, Respondents violated RCW 19.146.200 of the Mortgage Broker Practices Act by conducting or initiating 34 loan modification services for Washington residents while not being licensed by the Department.
2. Under RCW 19.146.220(2), the Director may impose fines or order restitution against licensees or other persons subject to chapter 19.146. In addition, RCW 19.146.220(4) empowers the Director to issue an order directing the licensee, its employees, or loan originator or any other person subject to this chapter to cease-and-desist from conducting business. Further, the Director, under RCW 19.146.220(5), may

¹ The rationale for the election of remedies under RCW 19.146.220(2) is set forth more fully in the Conclusions of Law.

issue an order prohibiting a person from participation in the activities governed by the Mortgage Broker Practices Act. Further, the director may recover investigation fees, under RCW 19.146.228(2) and WAC 550(4)(a), at the rate of \$48 per hour for the examiner's time.

Based upon the aforementioned statutes and administrative rules, Respondents are fined thirty-five thousand dollars (\$35,000.00). In addition, Respondents are ordered to cease and desist from conducting mortgage broker related activities in the State of Washington without being licensed. Respondents are further prohibited from participation in the conduct of the affairs of a licensed mortgage broker, any officer, principal, employee, or loan originator of a licensed mortgage broker, or any person subject to licensing under the Mortgage Broker Practices Act for a period of five years. Finally, Respondents are ordered to pay an investigation fee of \$792.00 to the Department for the costs incurred in conducting its investigation.

FINDINGS AT LAW

1. Law Offices of Stephen L. Burns & Associates, P.C.² was based in Los Angeles, California and had never been licensed by the Department to conduct business as a mortgage broker or loan originator in the State of Washington. *Declaration of Robert E. Jones*³ ¶ 4, attached to the Department's summary judgment motion.
2. Stephen L. Burns was the President and Owner of the Law Offices of Stephen L. Burns & Associates, P.C.. Mr. Burns was not licensed to practice law in the State of Washington and had never been licensed to conduct business as a mortgage broker or loan originator in the State of Washington. *Jones Declaration* ¶ 5.
3. In July 2009, the Department received a consumer complaint alleging the Respondents performed mortgage loan modifications for residents of the State of Washington. *Jones Declaration* ¶ 6.
4. On February 10, 2010, the Department issued a Subpoena to Produce Records to Respondents requiring the production of all Washington loan modification transaction documents. *Jones Declaration* ¶ 8.
5. By letter dated February 26, 2010 (Exhibit B attached to the Motion For Summary Judgment), in response to the Subpoena, Respondents acknowledged they had 34 Washington residents as mortgage modification clients. Respondents did not produce any of the requested documentation.

² Stephen L. Burns was disbarred by the California Supreme Court on April 13, 2011.

³ Mr. Jones was the Department's Financial Legal Examiner assigned to the case and conducted the investigation of the Respondents.

6. In one case, Respondents received \$2500.00 in fees from consumers L.T. and T.T., Washington residents, for loan modification services Respondents were not licensed to perform. *Jones Declaration* ¶ 9; Exhibit D.

7. On December 13, 2011, the Department filed its Motion For Summary Judgment. Respondents had until January 6, 2012 in which to file a response to the Department's summary judgment motion.

8. Respondents did not file any opposition to the Department's summary judgment motion.

CONCLUSIONS OF LAW

1. This Tribunal has jurisdiction over the parties and subject matter under RCW Chapter 19.146, RCW Chapter 34.05, WAC Chapter 208-660, and WAC Chapter 10-08.

2. WAC 10-08-135 permits the granting of summary judgment if the written record shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *cf. Magula v. Benton Franklin Title Co., Inc.*, 131 Wn.2d 171, 182, 930 P.2d 307, 313 (1997), *Verizon Northwest, Inc. v. The Employment Security Department*, 164 Wn.2d 909, 916, 194 P.3d 255, 260 (2008).

3. Respondents did not oppose the Department's summary judgment motion. Accordingly, there is no genuine issue of material fact and the Department is entitled to judgment as a matter of law.

4. RCW 19.146.200 states, in pertinent part:

"Mortgage broker or loan originator — License required — Suit or action for collection of compensation — Display of license — Designated broker required.

(1) A person, unless specifically exempted from this chapter under RCW 19.146.020, may not engage in the business of a mortgage broker or loan originator without first obtaining and maintaining a license under this chapter."

5. RCW 19.146.220 states:

"Director — Powers and duties — Violations as separate violations — Rules.

(1) The director may enforce all laws and rules relating to the licensing of mortgage brokers and loan originators, grant or deny licenses to mortgage brokers and loan originators, and hold hearings.

(2) The director may impose fines or order restitution against licensees or other persons subject to this chapter, or deny, suspend, decline to renew, or revoke licenses for:

(a) Violations of orders, including cease and desist orders;

(b) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(c) Failure to pay a fee required by the director or maintain the required bond;

(d) Failure to comply with any directive, order, or subpoena of the director; or

(e) Any violation of this chapter.

(3) The director may impose fines on an employee, loan originator, independent contractor, or agent of the licensee, or other person subject to this chapter for:

(a) Any violations of RCW 19.146.0201 (1) through (9) or (13), 19.146.030 through 19.146.080, 19.146.200, *19.146.205(4), or 19.146.265; or

(b) Failure to comply with any directive or order of the director.

(4) The director may issue orders directing a licensee, its employee, loan originator, independent contractor, agent, or other person subject to this chapter to cease and desist from conducting business.

(5) The director may issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(a) Any violation of 19.146.0201 (1) through (9) or (13), 19.146.030 through 19.146.080, 19.146.200, *19.146.205(4), or 19.146.265 ;

(b) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(c) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(d) Failure to comply with any directive or order of the director.

(6) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(7) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

(8) The director shall immediately suspend the license or certificate of a person who has been certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order." (emphasis added)

6. RCW 19.146.228 states, in pertinent part:

"Fees — Exception.

The director shall establish fees sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

(2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and"

7. WAC 208-660-550(4) states:

"Department fees and costs.

(4) Investigations.

(a) The department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation.

(b) The department will bill the licensee for the costs of services from attorneys, accountants, or other professionals or specialists retained by the director to aid in the investigation."

8. Respondents violated RCW 19.146.200 by engaging in the business of a mortgage broker or loan originator with respect to 34 mortgage modification transactions in the State of Washington while not being licensed by the Department to engage in such business. Therefore, Respondents are subject to the remedies set forth in RCW 19.146.220.

9. Although the Department, in the Statement of Charges and in its summary judgment motion, seeks to impose fines and order restitution, the unambiguous language of RCW 19.146.220(2) is clear that, the Director “. . . may impose fines or order restitution . . .”(emphasis added).

10. If a statute’s meaning is plain on its face, then the court or tribunal is obligated to give effect to the plain meaning as an expression of the legislative intent. *City of Olympia v. Drebeck*, 156 Wn.2d 289, 295, 126 P.3d 802 (2006) *citing Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002); *see also, Tesoro Refining & Marketing Co. v. Dep’t of Revenue*, 164 Wn.2d 310, 317, 190 P.3d 28, 32 (2008). The mere fact that two interpretations are conceivable does not make the statute ambiguous. *Tesoro*, 164 Wn.2d at 318.

11. As a default rule, the word “or” does not mean “and” unless the legislative intent clearly indicates to the contrary. *Tesoro*, 164 Wn.2d at 319. The term “or” is presumed to be used in the disjunctive unless the legislative intent is clearly contrary. *Childers v. Childers*, 89 Wn.2d 592, 595, 575 P.2d 201, 204 (1978).

As further indication that the term “or” is intended to be used in the disjunctive, the Washington Office of the Code Reviser, in the *Bill Drafting Guide 2011* and *Instructions On Style For The Washington Administrative Code (WAC) 2009*, recommends using “. . . a single “or” to indicate the disjunctive and a single “and” to indicate the conjunctive . . .”. *Guide* at Part IV,(1)(c)(ii); *Instructions* at (1)(c)(ii).

12. In drafting RCW 19.146.220, the legislature intended the Director to also have the power and authority to impose fines on an employee, loan originator, or agents of the licensee [RCW 19.146.220(3)]; issue cease and desist orders [RCW 19.146.220(4)]; and remove from office or prohibit from industry, **or both** [RCW 19.146.220(5)] (emphasis added). Each of these penalties is set forth in separate subsections. If the legislature intended to authorize the Director to order restitution as well as fines, the legislature could have easily written the statute by including another subsection authorizing restitution or deleted the “or” between fines and restitution and inserting “and/or” in its place, or included “or both” as it did in RCW 19.146.220(5). Since the language in subsection (5) is included in the same statute authorizing fines or restitution, it is clear the legislature did not intend to permit the Director to order both fines and restitution, otherwise the phrase “or both” would have been added to subsection (2).

13. The use of the disjunctive “or” by the legislature makes it clear the Director need make an election of which remedy he/she seeks to pursue. While the Department argued the term “or” can have an inclusive meaning, that meaning can be only be construed depending upon the context in which it is used. Because the legislature specified other penalties in separate subsections within the statute, it indicated their acknowledgment of the separate powers of the Director and the ability to impose those

sanctions. Further, the legislature recognized the Director needed to power to remove from office and prohibit from industry, if the circumstances warranted such remedies. RCW 19.146.220(5).

14. The legislative intent of the Mortgage Broker Practices Act (RCW 19.146) expresses the goal of having a statewide system to regulate the mortgage industry to promote fair dealings with citizens and preserve public confidence in the lending and real estate industries. RCW 19.146.005. Given the protection of the public as the intent expressed by the legislature, the imposition of fines is most appropriate in this circumstance as that sanction is likely to preserve the public confidence in the industry. While restitution benefits the individual harmed, that person can seek redress through the courts. However, this Tribunal recognizes that restitution, in lieu of fines, may be the appropriate sanction in certain cases. Since the Department has declined to make an election of fines or restitution in this case, and in keeping with the clear statutory language, this Tribunal has no alternative but to decide the appropriate remedy under RCW 19.146.220(2). In so doing, this Tribunal finds the imposition of fines under RCW 19.146.220(2) is most appropriate in this case. Accordingly, restitution can not be ordered in this adjudicative proceeding.

15. Under RCW 19.146.220(4), the Director has the authority to order that Respondents cease and desist from conducting business regulated by the Mortgage Broker Practices Act.

16. Under RCW 19.146.220(5), the Director has the authority to prohibit Respondents from participation in the conduct of the affairs of the licensed mortgage broker, any officer, principal, employee, or loan originator of a licensed mortgage broker, or any person subject to licensing under the Mortgage Broker Practices Act for a period of five years.

17. Under RCW 19.146.228(2) and WAC 208-660-550(4), the Director has the authority to impose the requirement that Respondents pay the Department investigation fees to cover the costs of the investigation. The investigation fee of \$792.00 for 16.5 hours spent on this case is reasonable.

INITIAL ORDER

Based upon the foregoing Findings at Law and Conclusions of Law, IT IS HEREBY ORDERED:

1. The Department of Financial Institution's Motion for Summary Judgment is **GRANTED**, in part.
2. Under RCW 19.146.220(4), Respondents are ordered to cease and desist from conducting business in the State of Washington without being licensed.

3. Under RCW 19.146.220(5)(a), Respondents are prohibited from participation in the conduct of the affairs of a licensed mortgage broker, any officer, principal, employee, or loan originator of any licensed mortgage broker, or any person subject to licensing under the Mortgage Broker Practices Act, for a period of five years.
4. Under RCW 19.146.228 and WAC 208-660-550, Respondents, jointly and severally, are ordered to pay an investigation fee of \$792.00 for the cost to the Department in conducting its investigation.
5. Under RCW 19.146.220(2), Respondents, jointly and severally, are ordered to pay a fine in the amount of thirty-five thousand dollars (\$35,000.00).
6. Each party shall bear its own costs, expenses and attorney's fees.

SO ORDERED and issued this 10th day of February, 2012 at Tacoma, Washington.



Thomas P. Rack
Administrative Law Judge
Office of Administrative Hearings

FURTHER APPEAL RIGHTS

Pursuant to WAC 10-08-211:

(1) Any party to an adjudicative proceeding may file a petition for review of an initial order.

(2) An appeal from an initial order is known as a "petition for review". The petition for review must be filed within twenty (20) days from the day the Office of Administrative Hearings mails this initial order to you. RCW 34.05.464, WAC 208-660-009(6)(h); WAC 10-08-211(2); WAC 10-08-110(2)(c) [Service by first class mail is complete upon mailing]. Your petition for review must (a) identify the parts of the initial order you disagree with and (b) refer to the evidence in the record that supports your position. If you decide to petition for review, you must serve copies of your petition on all parties or their representatives at the same time you file it with the Director of the Department of Financial Institutions ("Agency"). Filing with the Agency is deemed filed upon actual receipt by the Agency during office hours at the Agency's Enforcement Unit at P.O. Box

41200, Olympia, WA 98504. If the Agency does not receive a petition for review within twenty (20) days, the Agency may make this order its final order.

(3) Any party may file a reply to a petition for review. The reply shall be filed with the office where the petition for review was filed within ten days of the date of service of the petition and copies of the reply shall be served upon all other parties or their representatives at the time the reply is filed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**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:

NO. C-09-393-11-SC01

LAW OFFICES OF STEPHEN L. BURNS &
ASSOCIATES, P.C., and
STEPHEN L. BURNS, President and Owner,

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO CEASE AND DESIST, PROHIBIT
FROM INDUSTRY, IMPOSE FINE, ORDER
RESTITUTION, 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. **Law Offices of Stephen L. Burns and Associates (Respondent Law Offices of Stephen L. Burns)** is a California professional corporation located at 2975 Wilshire Boulevard Suite 640, Los Angeles, California 90010. Respondent Law Offices of Stephen L. Burns was formerly located at 3530 Wilshire Boulevard Suite 1060, Los Angeles, California 90010. Respondent Law Offices of Stephen L. Burns has never been licensed to conduct the business of a Mortgage Broker by the Department of Financial Institutions (Department).

¹ RCW 19.146

1 **2.2 Definition of Borrower.** Pursuant to RCW 19.146.010(3), a “Borrower” is defined as any person who
2 consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information
3 on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself
4 or herself, regardless of whether the person actually obtains such a loan.

5 **2.3 Requirement to Obtain and Maintain License.** Based on the Factual Allegations set forth in Section
6 I above, Respondents are in apparent violation of RCW 19.146.200 for engaging in the business of a mortgage
7 broker without first obtaining and maintaining a license under the Act.

8 III. AUTHORITY TO IMPOSE SANCTIONS

9 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 19.146.220(4), the Director may
10 issue orders directing a licensee, its employee or loan originator, or other person subject to the Act to cease and
11 desist from conducting business.

12 **3.2 Authority to Prohibit from the 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 19.146.200.

16 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(d) and (e) and WAC 208-660-530, the
17 Director may impose fines on a licensee or other person subject to the Act for failure to comply with a directive,
18 order, or subpoena of the Director or any violation of the Act.

19 **3.4 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2), the Director may issue orders directing
20 a licensee or other person subject to the Act to pay restitution.

21 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-550(4) and
22 WAC 208-660-520(9), upon completion of any investigation of the books and records of a licensee or other person
23 subject to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover
24 the cost of the investigation. The investigation charge will be calculated at the rate of forty-eight dollars (\$48) per
25 hour that each staff person devoted to the investigation.

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

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

6 **4.1** Respondents Law Offices of Stephen L. Burns and Associates, P.C. and Stephen L. Burns cease and desist
7 offering loan modification services or otherwise conducting the business of a mortgage broker or loan
originator in the State of Washington;

8 **4.2** Respondent Law Offices of Stephen L. Burns and Associates, P.C. be prohibited from participation in the
9 conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a
period of five (5) years;

10 **4.3** Respondent Stephen L. Burns be prohibited from participation in the conduct of the affairs of any mortgage
11 broker subject to licensure by the Director, in any manner, for a period of five (5) years; and

12 **4.4** Respondents Law Offices of Stephen L. Burns and Associates, P.C. and Stephen L. Burns jointly and
severally pay a fine which as of the date of this Statement of Charges totals \$35,000;

13 **4.5** Respondents Law Offices of Stephen L. Burns and Associates, P.C. and Stephen L. Burns jointly and
14 severally pay restitution to borrower L.T. in the amount of \$2,500 and pay restitution to all similarly
situated borrowers in an amount to be determined at hearing;

15 **4.6** Respondents Law Offices of Stephen L. Burns and Associates, P.C. and Stephen L. Burns jointly and
16 severally pay an investigation fee which as of the date of this Statement of Charges totals \$792 calculated
at \$48 per hour for the sixteen and one half (16.5) staff hours devoted to the investigation.

17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //

1 **V. AUTHORITY AND PROCEDURE**

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

8
9 Dated this 3rd day of March, 2011.



[Redacted signature area]

DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

10
11
12
13 Presented by:

14 [Redacted signature area]

15
16 ROBERT E. JONES
Financial Legal Examiner

17
18
19 Approved by:

20 [Redacted signature area]

21 JAMES R. BRUSSELBACK
Enforcement Chief