



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:

ERIC NIX,

Respondent.

OAH Docket No. 2010-DFI-0023

No. C-09-409-09-FO01

FINAL DECISION & ORDER

THIS MATTER has come before the Director (“hereinafter, “Director”) of the DEPARTMENT OF FINANCIAL INSTITUTIONS (hereinafter, “Department”) in the above- enumerated administrative action in regard to unlicensed mortgage loan originator, ERIC NIX (hereinafter, “Respondent”) and pursuant to the INITIAL ORDER GRANTING DEPARTMENT’S MOTION FOR SUMMARY JUDGMENT & DISMISSING APPEAL BASED ON RESPONDENT’S DEFAULT (hereinafter, “Initial Order”), based upon a STATEMENT OF CHARGES AND NOTICE OF INTENTION TO ENTER AN ORDER TO PROHIBIT FROM INDUSTRY, IMPOSE FINE, COLLECT INVESTIGATION FEE, AND OTHER RESTITUTION (hereinafter, “Statement of Charges”) issued by the Division of Consumer Services (hereinafter, “Division”) on or about December 9, 2009, under the authority of the Mortgage Broker Practices Act, Ch. 19.146 RCW (hereinafter, “MBPA”).

1.0 Procedural History. Respondent timely requested an Administrative Hearing to contest the Statement of Charges, and this matter was assigned to the Office of Administrative Hearings (hereinafter, “OAH”), which designated Administrative Law Judge Mary Ellen Goodwin (hereinafter, “Administrative Law Judge”) to hear the case. On May 3, 2010, the Administrative Law Judge issued a Corrected Pre-Hearing Order and Notice of Hearing (hereinafter, “Pre-Hearing Order”), setting June 24, 2010, as the deadline for the Division filing a Motion for Summary Judgment, July 7, 2010, as the deadline for Respondent’s

1 Response to Motion for Summary Judgment, and July 12, 2010, at 1:15 P.M., as the date and
2 time for telephonic hearing on Division's Motion for Summary Judgment. Subsequently, on
3 July 8, 2010, the Administrative Law Judge issued a Notice of Continuance setting forth a
4 new date and time for telephonic hearing of July 26, 2010, at 9:00 AM (hereinafter,
5 "Telephonic Hearing"). At the Telephonic Hearing, Charles E. Clark, Assistant Attorney
6 General (hereinafter, "Division's Counsel") appeared for the Division, having previously
7 lodged the Division's Motion for Summary Judgment and supporting documentation.
8 Respondent failed to appear at the Telephonic Hearing despite ample Notice of Hearing. The
9 Division orally amended the Statement of Charges on July 26, 2010.¹ On August 18, 2010,
10 the Administrative Law Judge issued her INITIAL ORDER GRANTING DEPARTMENT'S
11 MOTION FOR SUMMARY JUDGMENT & DISMISSING APPEAL BASED ON
12 RESPONDENT'S DEFAULT (hereinafter, "Initial Order"). Then, apparently believing that
13 the Administrative Law Judge still retained jurisdiction over this matter, the Respondent filed
14 with the OAH on or about August 30, 2010, a hand-written appeal of the Initial Order, which
15 was then forwarded by OAH to the Department and received by the Department on September
16 9, 2010. The Director has elected to treat this latter document as Respondent's Petition for
17 Review (hereinafter, "Petition for Review"). On or about September 16, 2010, Division's
18 Counsel sent a letter to the Director arguing that pursuant to WAC 10-08-211, the
19 Department's actual receipt of the Petition for Review on September 9, 2010, made it
20 untimely, and that the Director should disregard the Petition for Review and summarily
21 confirm by final order the Initial Order of the Administrative Law Judge. Subsequently,
22 Joseph M. Vincent, General Counsel to and acting on behalf of the Director, informed
23 Division's Counsel by letter dated June 23, 2011, that, notwithstanding Division Counsel's
24 September 16, 2010, letter, the Director would formally consider the Petition for Review and
25 that Division's Counsel would be required to lodge on behalf of the Division a reply to the
26 Petition for Review. In addition, Mr. Vincent requested on behalf of the Director that certain
27 issues not previously addressed by the parties or the Administrative Law Judge (see discussion
28 below in this Final Order) be considered in the Division's reply to the Petition for Review
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34 ¹ This oral amendment was made (1) to include specific amounts of restitution requested for each of the eight borrowers who allegedly paid fees
in the amount of \$46,207.00 and (2) to request that if the restitution to any particular borrower was not possible, the amount due the borrower
would accede to the Department of Revenue as unclaimed property. See *Administrative Law Judge's Initial Order*, p. 1.

1 (hereinafter, "General Counsel's Letter"). Thereafter, on June 29, 2011, the Division, by and
2 through Division's Counsel, submitted to the Director the DIVISION'S REPLY TO
3 RESPONDENT'S PETITION FOR REVIEW (hereinafter, "Division's Reply"). Upon the
4 filing of the Division's Reply on June 29, 2011, this matter was then fully at issue before the
5 Director.

6 2.0 Preliminary Considerations. Before resolving this matter, the Director must consider
7 the following preliminary issues:

8 2.1 Timeliness of the Petition for Review. Before the Director may even consider
9 the Petition for Review, the Director will consider and resolve the issue of timeliness of the
10 Petition for Review. The Washington Administrative Procedures Act, at RCW 34.05.250,
11 authorized the adoption of Model Rules of Procedures by Washington State agencies.
12 Pursuant to the Department's Rules, at WAC 208-08-020(1), the Department has adopted the
13 Model Rules of Procedures as set forth in WAC 10-08-035 through 10-08-230. The date of
14 the Initial Order was August 18, 2010. The date of mailing (legal service) was also August
15 18, 2010. Pursuant to WAC 10-08-211(2), Respondent had twenty (20) days to file his
16 Petition for Review, notwithstanding the strict requirements of WAC 10-08-110(1)(a),²
17 Respondent did in good faith file a hand-written Petition for Review with the offices of OAH
18 as of August 30, 2010, even though the Department did not receive OAH's forward
19 transmission of the Petition for Review until September 7, 2010. Notwithstanding the afore-
20 mentioned letter of objection filed with the Director as of September 16, 2010, the Director
21 recognizes that this pro se Respondent did evidence a good faith attempt to comply with the
22 time requirements for filing petitions for review from initial orders, having caused his Petition
23 for Review to be delivered to the OAH only 12 days after the Initial Order. Therefore, even
24 though the Department did not receive the Petition for Review until September 9, 2010 – two
25 days after the deadline for filing a petition for review with the Director – the Director has
26 determined to consider the Petition for Review.

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31 ² WAC 10-08-110(1)(a) declares:

32 *Papers required to be filed with the agency shall be deemed filed upon actual receipt during office hours at any office*
33 *of the agency. Papers required to be filed with the presiding officer shall be deemed filed upon actual receipt during*
34 *office hours at the office of the presiding officer.*

[Emphasis added.]

1 2.2 Is There a Proper Ground Stated for a Petition for Review? Respondent's hand-
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 3 written Petition for Review is focused around his self-declared inability to pay substantial
 4 restitution to eight (8) borrowers for whom he was a loan officer. These 8 borrowers and the
 5 dates of their loan applications, closings and commissions received by Respondent are, as
 6 follows:
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| Name | Loan Application | HUD Settlement | Commission | Halstead Affidavit |
|------------|------------------|----------------|------------|--------------------|
| [REDACTED] | 1/31/2007 | 3/12/2007 | 3/12/2007 | pp. 2-3 |
| [REDACTED] | 4/5/2007 | 6/6/2007 | 6/6/2007 | p. 7 |
| [REDACTED] | 6/10/2007 | 7/23/2007 | 7/24/2007 | p. 3 |
| [REDACTED] | 10/5/2007 | 10/31/2007 | 10/31/2007 | p. 5 |
| [REDACTED] | 11/16/2007 | 12/6/2007 | 12/7/2007 | p. 4 |
| [REDACTED] | 12/7/2007 | 12/17/2007 | 12/17/2007 | p. 4 |
| [REDACTED] | 11/6/2007 | 12/26/2007 | 12/26/2007 | pp. 5-6 |
| [REDACTED] | 11/8/2007 | 1/23/2008 | 1/23/2008 | p. 6 |

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 17 Complaining to the Director about an inability to pay restitution to these borrowers is
 18 not, in and of itself, a proper ground for Petition for Review.³ However, viewing the Petition
 19 for Review in a light most favorable to the Respondent, the Director has elected to consider the
 20 Petition for Review as if it properly raises an issue of fact and/or law. Specifically, the Director
 21 finds that there is in Respondent's handwriting an attempt, as the Director understands it, to
 22 assert that during the periods when the above-referenced loans were made, Respondent was not
 23 required to be licensed. Accordingly, the Director also finds preliminarily that there was, in
 24 effect, a proper ground stated by Respondent for his Petition for Review, to wit: *For the eight*
 25 *loans stated above, was Respondent required to be licensed?*
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32 ³ In the typical course, merely complaining about the inability to afford payment of a fine should be raised by a respondent, if at all, in a petition
 33 for reconsideration after entry of a final order. Moreover, the Director cannot consider, in either a petition for review or petition for
 34 reconsideration, self-declarations of inability to pay that are not supported by evidence of hardship or other appropriate, extenuating
 circumstances on the face of Respondent's handwritten Petition for Review. However, the Director has the plenary authority to consider at any
 time the appropriateness of either the amount of a fine or the length of time in which a respondent may be banned from participation in the
 industry, even though neither issue may have been specifically raised by a respondent in his or her petition for review.

1 3.0 Summary of the Case. This is a case in which the Division has sought to ban
2 Respondent from participation in the mortgage brokerage industry in Washington State for
3 five (5) years, pay restitution to eight (8) borrowers in the aggregate amount of Forty-Six
4 Thousand Two Hundred Seven Dollars (\$46,207.00), and pay an investigate fee of Two
5 Hundred Forty Dollars (\$240.00). Upon a failure of Respondent to file a response to the
6 Motion for Summary Judgment or to appear for Telephonic Hearing after due notice, an Initial
7 Order was entered by the Administrative Law Judge banning Respondent from participation in
8 the mortgage brokerage industry in Washington State for five (5) years, ordering that he pay
9 restitution to eight (8) borrowers in the aggregate amount of Forty-Six Thousand Two
10 Hundred Seven Dollars (\$46,207.00), and ordering that he pay an investigate fee of Two
11 Hundred Forty Dollars (\$240.00).

12 There are two issues raised on Petition for Review:

- 13 (1) In regard to the eight (8) loans in question, was Respondent required to be
14 licensed?
- 15 (2) Notwithstanding Respondent's *failure* to oppose the Motion for Summary
16 Judgment or appear at the Telephonic Hearing, was the Administration Law Judge
17 proper in entering the Initial Order?

18 4.0 Director's Considerations.

19 4.1 Standards for Summary Judgment in Administrative Actions. The Director
20 recognizes that the Division's Motion for Summary Judgment was granted incident to the
21 default of Respondent for failure to appear for Telephonic Hearing on July 26, 2010, which
22 resulted in the Initial Order being issued on August 18, 2010. However, even in the presence of
23 a default by the Respondent, the Director cannot grant a Final Order affirming an Initial Order
24 unless the underlying findings of facts and conclusions of law, accepted as true, warrant such a
25 Final Order.

1 The Department has adopted the Model Rules of Procedure, Chapter 10-08 WAC,
2 except to the extent of any conflict with the Department's Rules of Procedure.⁴ WAC 10-08-
3 135 sets forth the standard to be followed by the Department and the Administrative Law Judge,
4 as its agent, when considering the Motion for Summary Judgment and the Declaration of
5 William Halstead in support thereof.⁵ In evaluating the application of this standard, the
6 Director may rely on applicable law from sources other than WAC 10-08-135 itself and must be
7 respectful of the constitutional rights of respondents.⁶ To that end, the Director is required to
8 weigh on review all pleadings, evidence and argument in a light most favorable to the non-
9 moving party.⁷ If there is any inference of a triable issue of fact, then summary judgment is
10 inappropriate.⁸ Litigants are entitled to a dispositive hearing on all issues of fact and law.⁹
11 Summary judgment may be granted only if reasonable minds could reach only one conclusion
12 based upon the facts in evidence, but neither the non-moving party, Administrative Law Judge
13 or the Director may rely upon speculation or argumentative assertions that unresolved factual
14 issues remain to be tried.¹⁰ These principles apply equally to the Administrative Law Judge and
15 to the Director evaluating the Initial Order.¹¹

24 ⁴ WAC 208-08-020(1) declares: "The department adopts the model rules of procedure as set forth in WAC 10-08-035 through 10-08-230. If
25 there is a conflict between the model rules and this chapter, the rules in this chapter shall govern. Wherever the term 'agency' appears in the
26 model rules it means the department of financial institutions."

27 ⁵ WAC 10-08-135 declares that "[a] motion for summary judgment may be granted and an order issued [only] if the written record shows that
28 there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

29 ⁶ WAC 10-08-220 declares: "Nothing in chapter 10-08 WAC is intended to diminish the constitutional rights of any person or to limit or
30 modify additional requirements imposed by statute, including the Administrative Procedure Act."

31 ⁷ *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998).

32 ⁸ *Davis v. W. One Auto. Group*, 140 Wn. App. 449, 456 (2007).

33 ⁹ *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300-01, 45 P.3d 1068 (2002), citing *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124
34 (2000).

¹⁰ *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).

¹¹ *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

1 4.2 Appropriateness of Summary Judgment. However, before the Director may
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3 conclude that summary judgment should be granted, the Director must deal with the issue of
4 whether, even though never raised before the Administrative Law Judge, there was a latent
5 issue of law (or, rather, *publicly declared policy of the agency*) as to whether Respondent was
6 required to be licensed at any time on or prior to consummation of the loans to the eight (8)
7 borrowers in question. This is critical as to whether there is any liability against Respondent at
8 all, since the Division has never alleged, nor is there any evidence in the record on review
9 (including the Report of Examination of Respondent's employer, Spartan Mortgage), that there
10 was anything else actionable by the Department in the making of these eight (8) loans.¹²

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13 By way of the General Counsel's Letter to Division's Counsel and the Respondent, the
14 Director requested that the Division's Reply to the Petition for Review address in detail the
15 policy of the Division of Consumer Services in calendar year 2007 with respect to Loan
16 Originators such as Respondent.¹³ To the extent that the General Counsel's Letter may have
17 inadvertently appeared to call for new evidence not heretofore of record in this matter, such
18 evidence (if any) may not be considered by the Director upon Petition for Review.¹⁴ However,
19 to the extent that the General Counsel's Letter sought clarification of matters to which the
20 Director may take official notice (in the manner of judicial notice under Washington Rule of
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26 ¹² The Director does not consider the separate acts or omissions of Spartan Mortgage, since Spartan Mortgage (Respondent's employer during the period relevant to this matter) is not a respondent in *this* case.

27 ¹³ In this regard, the General Counsel's Letter posed the following questions:

28 “(1) Did Mr. Nix have a so-called ‘provisional license’ in calendar year 2007, which the Division of Consumer Services
29 was requiring on or after January 1, 2007, under the Mortgage Broker Practices Act Amendments of 2006, to anyone who
30 applied by December 31, 2006? The Director requests that the Division of Consumer Services also explain in its Reply to
the Petition for Review whether the closings of a “provisional licensee,” which did not take place after December 31,
2007, ought to result in violations and restitution.

31 “(2) Did Mr. Nix take any loan applications on or after January 1, 2008, when he would have been required to have a
32 ‘permanent license’ that would have entailed passing a licensing examination and other requirements on or prior to
33 December 31, 2007? To the extent that the Report of Examination out of which the Statement of Charges originated is
part of the Record in this matter and contains an answer to this question, the Director requests a full accounting as part of
the [Division's] Reply to Petition for Review.”

34 ¹⁴ *C.M. Towle v. Washington State Dep't of Fish and Wildlife*, 94 Wash. App. 196, 206, 971 P.2d 591 (1999).

1 Evidence 201¹⁵), such matters may be considered by the Director on Petition for Review. In
2 this regard, then, the Director takes official notice of the fact that the Division had information
3 on the Department's Web site that explained when a loan originator could continue to originate
4 loans after January 1, 2007, without a license having to be issued. The information on the
5 Department's Web site was that a loan originator could continue to originate loans without a
6 license in 2007 only if he or she had submitted a complete loan originator license application,
7 including each of the following:
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11 (1) The individual had submitted to the Division both a completed online application
12 and a completed and notarized MU4 form;
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14 (2) The individual had submitted to the Division fingerprint cards; and
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16 (3) The individual had paid the loan originator license application fee.

17 Subject to the fulfillment of these conditions, this noticed permission to unlicensed originators
18 was only limited to loans originated and consummated in 2007.
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20 The Administrative Law Judge determined in the Initial Order¹⁶ that Respondent did
21 business for Killion Enterprises d/b/a Spartan Mortgage as a loan originator in 2007 and 2008
22 and that Respondent did not obtain a loan originator license before conducting business as a
23 loan originator in 2007 and 2008. The Petition for Review does not dispute these
24 uncontroverted facts. Moreover, the Director takes official notice of the fact that the
25 Department had put all loan originators on notice that the only way that they could proceed to
26 originate loans in 2007 without perfecting a loan originator license was to fulfill the express
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32 ¹⁵ Pursuant to Washington Evidence Rule 201(b), "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1)
33 generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose
34 accuracy cannot reasonably be questioned." It is the determination of the Director that the Director may take "official notice" of any statute,
rule, written policy, or written interpretation that was within the province of the Department during the periods relevant to this matter, including,
without limitation, published notices (e.g., the Department's Internet notices to persons subject to license).

¹⁶ Initial Order, Finding of Fact VI(1)-(2), at p. 3.

1 conditions of that permission as set forth above. However, it is clear from the record on review,
2 including Respondent's own Petition for Review, that Respondent made no effort to fulfill any
3 of those conditions.
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5 Respondent essentially contends that he relied upon his employer, Spartan Mortgage,
6 informing him that he did not have to actually obtain a license during 2007, the period in
7 question.¹⁷ However, the 2006 MBPA Amendments, which took effect January 1, 2007, and
8 which initiated the requirement of a loan originator license, applied specifically to Respondent
9 and all other individuals similarly situated. Respondent had a duty to rely upon the MBPA as
10 amended and the public notices of the Department as set forth above. Respondent did not have
11 a right to rely on his employer's representations (if any) as a defense to his affirmative duty to
12 comply with the MBPA and the public notices of the Department.
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17 The Director therefore affirms the essential undisputed facts and applicable law as set
18 forth in the Initial Order.¹⁸
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20 5.0 Appropriateness of Relief

21 Notwithstanding the Director's determination above, the Director may on his own
22 motion, when deliberating the entry of a final order of the Department, consider the
23 appropriateness of the remedy sought by the Division and/or imposed by an Administrative Law
24 Judge in an initial order.
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27 In this regard, the Director finds that the initial determination of the Administrative Law
28 Judge, prohibiting Respondent from participation in the conduct of the affairs of any mortgage
29 broker subject to licensure by the Director for a period of five (5) years, is appropriate given the
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33 ¹⁷ Respondent declares in his Petition for Review: "I was under the impression from my employer that we had one year from hire date to obtain a Washington license. I only worked there for 15 months. I was in the process of obtaining said license when I left."

34 ¹⁸ Initial Order, VI(1)-(71), at pp. 3-11.

1 public policy being asserted and the nature of the violations. However, the Director further
2 finds that this five (5) year ban should run from the date of the Statement of Charges, December
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4 9, 2009, through December 8, 2014.

5 Additionally, the Director finds that the fine of Eight Thousand Dollars (\$8,000.00) and
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7 investigative fees of Two Hundred Forty Dollars (\$240.00), respectively, payable to the
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9 Department, are appropriate given the Department's actual costs of investigation, the public
10 policy being asserted and the nature of Respondent's violations.

11 Finally, the Director has been asked, even in this Petition for Review, to reconsider the
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13 appropriateness of the restitution amounts set forth in the Initial Order. There is no question
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15 that they are permissible under the law. But it also appears from the record on review
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17 (including the Report of Examination) that the restitution amounts sought by the Department in
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19 its Motion for Summary Judgment and contained in the Initial Order are appropriate under the
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21 totality of circumstances and ought not to be disturbed, notwithstanding Respondent's self-
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23 serving declaration (however true) that he was misled by his employer. The individual
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25 restitution amounts appear to be well-calculated and appropriate given the public policy of the
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27 statute that is being enforced and the nature of Respondent's violations.¹⁹

28 6.0 Final Order

29 Based upon the above determinations,

30 IT IS HEREBY ORDERED AS FOLLOWS:

31 6.1 Summary Judgment. The grant of Division's Motion for Summary Judgment is
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33 AFFIRMED consistent with this Final Decision and Order.

34 ¹⁹ Since the Report of Examination was made part of the record on review, the Director had occasion to review it at length and notes that there is evidence of other material violations committed against the eight (8) borrowers in question in connection with loans originated by Respondent while working for Spartan Mortgage. So, even though the Division did not ultimately seek relief against Respondent for other violations against these borrowers, there is evidence that it could have. Therefore, while Respondent is at liberty to make a Motion for Reconsideration of this Final Order, the Director would be within his discretion to consider the evidence of those other violations as contained in the Report of Examination in his determination whether to reconsider the appropriateness of restitution or the fine imposed by the Department.

1 6.2 Initial Order Affirmed. The Initial Order of the Administrative Law Judge is
2 AFFIRMED, subject to and consistent with the reasoning set forth above in this
3 Final Order.

4 6.3 Ban from Industry. Respondent, ERIC NIX, is hereby prohibited from
5 participation in the conduct of the affairs of any mortgage broker subject to
6 licensure by the Director for a period of five (5) years, beginning December 9,
7 2009, and ending December 8, 2014.

8 6.4 Fine to Department. Respondent, ERIC NIX, shall pay a fine of Eight
9 Thousand Dollars (\$8,000.00) to the WASHINGTON STATE
10 DEPARTMENT OF FINANCIAL INSTITUTIONS.

11 6.5 Investigative Fees. Respondent, ERIC NIX, shall pay the sum of Two
12 Hundred Forty Dollars (\$240.00), as and for investigative fees, to the
13 WASHINGTON STATE DEPARTMENT OF FINANCIAL
14 INSTITUTIONS.

15 6.6 Restitution. Respondent, ERIC NIX, shall pay restitution as follows:

16 6.6.1 The sum of Four Thousand Four Hundred Five Dollars
17 (\$4,405.00), payable to [REDACTED] as and for
18 restitution to him in connection with a loan originated by
19 Respondent for which Respondent received a commission on or
20 about March 12, 2007;

21 6.6.2 The sum of Four Thousand Seven Hundred Twenty-Five
22 Dollars (\$4,725.00), payable to [REDACTED] as and
23 for restitution to him in connection with a loan originated by
24 Respondent for which Respondent received a commission on or
25 about June 6, 2007;

26 6.6.3 The sum of Four Thousand Nine Hundred Seventy-Five Dollars
27 (\$4,975.00), payable to [REDACTED] as and for
28 restitution to him in connection with a loan originated by
29 Respondent for which Respondent received a commission on or
30 about July 24, 2007;

- 1 6.6.4 The sum of Seven Thousand One Hundred Nine-Two Dollars
2 and Twenty-One Cents (\$7,192.21), payable to [REDACTED]
3 as and for restitution to her in connection with a loan originated
4 by Respondent for which Respondent received a commission on
5 or about October 31, 2007;
- 6 6.6.5 The sum of Seven Thousand Thirty Dollars and Ninety-Four
7 Cents (\$7,030.94), payable to [REDACTED] as and for
8 restitution to her in connection with a loan originated by
9 Respondent for which Respondent received a commission on or
10 about December 7, 2007;
- 11 6.6.6 The sum of Three Thousand One Hundred Seventy-Five Dollars
12 (\$3,175.00), payable to [REDACTED] as and for
13 restitution to her in connection with a loan originated by
14 Respondent for which Respondent received a commission on or
15 about December 17, 2007;
- 16 6.6.7 The sum of Eight Thousand Six Hundred Ninety-Seven Dollars
17 and Eighty-Two Cents (\$8,697.82), payable to [REDACTED]
18 [REDACTED] as and for restitution to him in connection with a loan
19 originated by Respondent for which Respondent received a
20 commission on or about December 26, 2007; and
- 21 6.6.8 The sum of Six Thousand Six Dollars and Three Cents
22 (\$6,006.03), payable to [REDACTED] as and for restitution
23 to her in connection with a loan originated by Respondent for
24 which Respondent received a commission on or about January
25 23, 2008.

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28 6.7 Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to
29 file a Petition for Reconsideration stating the specific grounds upon which relief is requested.
30 The Petition must be filed in the Office of the Director of the Department of Financial
31 Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at
32 P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this
33 Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness
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1 of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in
2 this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days
3 from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the
4 parties with a written notice specifying the date by which it will act on a petition.

5 6.8 Stay of Order. The Director has determined not to consider a Petition to Stay the
6 effectiveness of this order. Any such requests should be made in connection with a Petition for
7 Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

8 6.9 Judicial Review. Respondent has the right to petition the superior court for
9 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the
10 requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

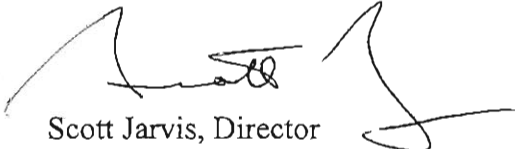
11 6.10 Service. For purposes of filing a Petition for Reconsideration or a Petition for
12 Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of
13 service attached hereto.

14 6.11 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative
15 Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective
16 immediately upon deposit in the United States Mail.

17 Dated at Tumwater, Washington, on this 18th day of August, 2011.

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20 WASHINGTON STATE DEPARTMENT
21 OF FINANCIAL INSTITUTIONS

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23 By:

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25 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:

ERIC NIX, Unlicensed Loan Originator,

Respondent.

NO. C-09-409-09-SC01

STATEMENT OF CHARGES and NOTICE OF
INTENTION TO ENTER AN ORDER TO
PROHIBIT FROM INDUSTRY, IMPOSE FINE,
COLLECT INVESTIGATION FEE, AND ORDER
RESTITUTION

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 .310, and based upon the facts available as of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondent Eric Nix (Respondent Nix) worked for Killion Enterprises Inc. d/b/a Spartan Mortgage² as a loan originator at all times relevant to this Statement of Charges. Respondent Nix has never been licensed by the Department to conduct the business of a loan originator.

1.2 Loan Originator License. In order to conduct business as a loan originator in 2007 and 2008, Respondent Nix was required to obtain and maintain a loan originator license before originating any residential mortgage loans. Respondent Nix did not obtain a loan originator license and as a result could not conduct the business of a loan originator.

1.3 Unlicensed Loan Originator Activity. Respondent Nix conducted the business of a loan originator from 12178 SW Garden Place, Building 3, Park 217, Tigard, Oregon 97223, between, on or about, January 31,

¹ RCW 19.146 (2006).

² The Department has issued a Statement of Charges (C-09-013-09-SC01) against Killion Enterprises Inc. d/b/a Spartan Mortgage that includes an allegation of allowing Respondent Nix to originate loans while not licensed.

1 2007, and January 23, 2008. Respondent Nix originated at least 8 loans¹ for borrowers whose property was
2 located in the state of Washington.

3 **1.4 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
4 Respondent continues to date.

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

6 **2.1 Definition of Mortgage Broker.** Pursuant to RCW 19.146.010 (12) and WAC 208-660-006,
7 "Mortgage Broker" means any person who, for compensation or gain, or in the expectation of compensation or
8 gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential
9 mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a
10 person in obtaining or applying to obtain a residential mortgage loan.

11 **2.2 Definition of Loan Originator.** Pursuant to RCW 19.146.010 (10), "Loan Originator" means a natural
12 person who (a) takes a residential mortgage loan application for a mortgage broker, or (b) offers or negotiates
13 terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect
14 compensation or gain.

15 **2.3 Definition of Borrower.** Pursuant to RCW 19.146.010 (3) and WAC 208-660-006, a "Borrower" is
16 defined as any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or
17 seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or
18 persons including himself or herself, regardless of whether the person actually obtains such a loan.

19 **2.4 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent Nix is in
20 apparent violation of RCW 19.146.0201(1), (2), and (3) for directly or indirectly employing a scheme, device or
21 artifice to defraud or mislead borrowers or lenders or any person, for engaging in an unfair or deceptive practice
22 toward any person, and for obtaining property by fraud or misrepresentation.

23 **2.5 Requirement to Obtain and Maintain License.** Based on the Factual Allegations set forth in Section
24 I above, Respondent Nix is in apparent violation of RCW 19.146.200 for engaging in the business of a loan
25 originator without first obtaining and maintaining a license under the Act.

¹ Killion loan numbers 12117420, 12327136, 1096918870, 12531794, 12555207, 12605200, 12505780, and 168874976.

1 **III. AUTHORITY TO IMPOSE SANCTIONS**

2 **3.1 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(5)(a), the Director may issue
3 orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed
4 mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker
5 or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9) and
6 RCW 19.146.200.

7 **3.2 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(e), and (3)(a), the Director may impose
8 fines on a licensee, employee or loan originator of the licensee, or other person subject to the Act for any
9 violations of RCW 19.146.0201(1) through (9) or (13), RCW 19.146.030 through RCW 19.146.080, RCW
10 19.146.200, RCW 19.146.205(4), or RCW 19.146.265, or any violation of the Act.

11 **3.3 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-520, and WAC
12 208-660-550(5), upon completion of any investigation of the books and records of a licensee or other person subject
13 to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of
14 the investigation. The investigation charge will be calculated at the rate of \$48 per hour that each staff person
15 devoted to the investigation.

16 **3.4 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2)(e), the Director may issue orders
17 directing a licensee, its employee or loan originator, or other person subject to the Act to pay restitution to for any
18 violation of the Act.

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

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

- 24 **4.1** Respondent Eric Nix be prohibited from participation in the conduct of the affairs of any mortgage
25 broker subject to licensure by the Director, in any manner, for a period of 5 years;
- 4.2** Respondent Eric Nix pay a fine of \$8,000;

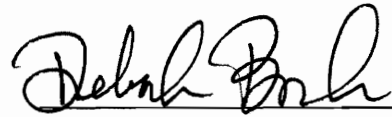
1 4.3 Respondent Eric Nix pay an investigation fee, which as of the date of these charges is \$240 calculated at
2 \$48 per hour for 5 staff hours devoted to the investigation; and

3 4.4 Respondent Eric Nix pay restitution in the amount received as compensation for the loans he originated
4 while unlicensed.

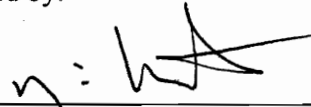
5 **V. AUTHORITY AND PROCEDURE**

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

12 Dated this 9th day of December, 2009.

13 
14 DEBORAH BORTNER
15 Director Division of Consumer Services
16 Department of Financial Institutions

17 Presented by:

18 
19 WILLIAM HALSTEAD
20 Financial Legal Examiner



21 Approved by:

22 
23 JAMES R. BRUSSELBACK
24 Enforcement Chief

25