

ORDER SUMMARY – Case Number: C-09-410

Name(s): Nick Pfeifer

Order Number: C-09-410-10-FO01

Effective Date: January 6, 2012

License Number: NMLS 136286
Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)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: January 6, 2017

Investigation Costs	\$240	Due: past	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Fine	\$4,000	Due: past	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Assessment(s)	\$0	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$31,440	Due: past	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 checked="" type="checkbox"/> N		
	No. of Victims:	4		

Comments: _____



STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

NICK PFEIFER,

Respondent.

OAH No. 2010-DFI-0046

DFI No. C-09-410-09-FO01

FINAL DECISION & ORDER

I. DIRECTOR'S CONSIDERATION

A. Procedural History. This matter has come before the Director ("Director") of the Department of Financial Institutions of the State of Washington ("Department") pursuant to RCW 34.05.464. On December 9, 2009, the Director, through Deborah Bortner, the Director of the Division of Consumer Services ("Division"), entered a Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry, Impose Fine, Collect Investigation Fee, and Order Restitution ("Statement of Charges") against the Respondent, Nick Pfeifer ("Respondent").

On April 12, 2010, the Division received the Respondent's Application for Adjudicative Hearing and forwarded it to the Office of Administrative Hearings ("OAH"). A prehearing conference was scheduled for September 9, 2010, before Administrative Law Judge Gina L. Hale ("ALJ Hale") and both parties appeared.

At the September 9, 2010, prehearing conference, the Division's counsel of record, Assistant Attorney General Charles E. Clark ("AAG Clark") informed ALJ Hale of the Division's intent to submit a Motion for Summary Judgment.¹ Both parties were at that time given notice of the briefing and argument schedule.

Later, on November 5, 2010, ALJ Hale issued a formal Prehearing Conference Order and Notice of Hearing ("Prehearing Order").

Oral arguments on the Motion for Summary Judgment were set for Wednesday, December 15, 2010, at 1:15 P.M. Only AAG Clark appeared on behalf of the Division. Despite due notice, Respondent did not appear. Nor did Respondent submit a brief or declaration, or equivalent, in opposition to the Motion for Summary Judgment and its supporting declaration of William Halstead, the Division's Financial Legal Examiner ("Halstead Declaration"), despite having been served with the Division's papers and having had ample time to lodge a response.

Correctly, ALJ Hale did not treat the matter before her as a default hearing.

Rather, despite Respondent's unexplained or unexcused absence, the hearing was conducted as a Motion for Summary Judgment to determine whether there was no issue of triable fact and whether the Division was entitled, as it claimed, to Summary Judgment as a matter of law.

Correctly, ALJ Hale considered the entire record and oral argument before her, including the oral argument of AAG Clark, the Division's Motion for Summary Judgment, and the Halstead Declaration. As required by the Administrative Procedures Act and governing Model

¹ See the Model Rules of Administrative Procedure, at WAC 10-08-135.

Rules of Administrative Procedure,² ALJ Hale made Findings of Fact and Conclusions of Law³ and issued her Initial Decision and Order on Motion for Summary Judgment (“Initial Order”) on December 16, 2010.

On or about December 29, 2010, Respondent filed with the Department a Petition for Review in the form of a letter dated December 20, 2010, addressed “To Whom It May Concern.” In an abundance of fairness to Respondent, the Director accepted this letter as a Petition for Review (“Petition for Review”) to which the Division was entitled to reply.

Thereafter, the Division filed a Reply to Respondent’s Petition for Review (“Division’s Reply”) on January 6, 2011.

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

1. Statement of Charges, cover letter dated September 24, 2009, and Notice of Opportunity to Defend and Opportunity for Hearing, with documentation of service;
2. Application of the Respondent for Hearing;
3. Notice of Prehearing Conference dated June 23, 2010;
4. Prehearing Order dated November 5, 2010;

² See RCW 34.05.461(3); WAC 10-08-210.

³ The Director notes with particular satisfaction that ALJ Hale made specific Findings of Fact and Conclusions of Law, as required by RCW 34.05.461(3) and WAC 10-08-210 for all initial and final orders – even orders on summary judgment or orders of default. This administrative procedure rule is distinct from the one for summary judgment under Civil Rule 56 in superior court, where the trial court does not make findings of fact or conclusions of law when entering an order on summary judgment. Rather, the Superior Court is required under CR 56(h) to merely designate the documents that were considered as a basis for granting summary judgment. (See, for example, *Thongchoom v. Graco Children’s Products, Inc.*, 117 Wn.App. 299, 71 P.3d 214 (2003)). This

5. The Division's Motion for Summary Judgment;
6. The Halstead Declaration (with 31 supporting Exhibits);
7. Recorded Argument of the December 15, 2010, Summary Judgment Hearing;
8. The Initial Order;
9. The Petition for Review; and
10. The Division's Reply.

C. Grounds for Final Decision and Order. Despite the failure of Respondent to appear at the Summary Judgment Hearing, the Director is disinclined to treat this case as if it were simply a review from an order of default.

Respondent's Petition for Review, short though it may be, is in effect requesting the Director:

1. To excuse his lack of appearance at the Summary Judgment Hearing on the basis, Respondent claims, that he "was UNAWARE there was a hearing scheduled on this matter" on December 15, 2010; and

2. To reverse the Initial Order granting Summary Judgment and remand the case to ALJ Hale for hearing on the basis of his latent, unsworn and unsupported statements contained in the Petition for Review which purport to raise triable issues of fact.

As to the first issue raised by the Petition for Review, the Director cannot accept the mere statement from a Respondent that he was unaware of a scheduled hearing. Subjective lack of awareness is no substitute for the incontrovertible evidence in the record that Respondent had notice of the hearing date and time and neither appeared in opposition to the Motion for Summary

Judgment nor filed any competent declaration or other evidence in opposition to it. Had the Petition for Review purported to provide specific and credible evidence to the Director of excusable neglect in this regard, the Director would have been inclined to seriously consider whether the case ought to be remanded for hearing. However, the absence of anything but the mere assertion of being “unaware” of the hearing date and time, despite clear objective evidence to the contrary, satisfies the Director that this first contention of Respondent should be rejected.

This case presents the Director with an opportunity to articulate what ought to be the correct standard for review of a summary judgment order by an administrative law judge, when the respondent fails to appear or present written documents at a hearing on motion for summary judgment and the administrative law judge does not specifically order a default or dismissal.

The Division’s Reply assumes that ALJ Hale’s Initial Order was an order of default as that administrative action is specifically understood under the Administrative Procedures Act and the Model Rules of Administrative Procedure.⁴ Indeed, the Division’s Reply predicates its “default order” argument on the language of ALJ Hale’s language in the Prehearing Order dated November 5, 2010, which AAG Clark cites at Page 2 of the Division’s Reply.⁵

However, while the Director understands and appreciates the argument in Division’s Reply, nowhere in the Initial Order does ALJ Hale enter a “default” or “dismissal” pursuant to RCW

⁴ See RCW 34.05.440; WAC 10-08-200(13). The standard for granting administrative default orders is set forth in RCW 34.05.440(2), which declares: “If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, other than failing to timely request an adjudicative proceeding as set out in subsection (1) of this section, the presiding officer *may* serve upon all parties a default or other dispositive order, *which shall include a statement of the grounds for the order.*” [Emphasis added]

⁵ “Both the Department and the Respondent shall register an appearance on the day of the hearing 10 minutes before the scheduled hearing time by calling locally (360) 690-7189 or toll free 1-800-243-3451. . . . If the Respondent fails to call in and register an appearance, a default or dismissal *may* be entered. RCW 34.05.440 and WAC 10-08-200(13).” [Emphasis added]

34.05.440 and WAC 10-08-200(13). Nor does ALJ Hale use language expressing that her decision was based upon the *default* of the Respondent.

Based upon what happened, ALJ Hale had the *option* (but not the duty) to issue an order of default or dismissal pursuant to RCW 34.05.440 and WAC 10-08-200(13). She chose not to, and instead looked at the record before her and made Findings of Fact and Conclusions of Law based upon the merits of the Motion for Summary Judgment. This was entirely proper and was the only basis for her Initial order. So with due respect to the Division and AAG Clark, we cannot properly consider AAG Clark’s “default order” argument, because this case is not before the Director as a review of a *default* order – even though Respondent also tries (unwittingly) to make it so in the first argument of his Petition for Review.

Rather, this case is before the Director squarely on the issue of whether summary judgment should be affirmed based upon the record. The Director is of the view that summary judgment is appropriate and should be affirmed. However, it is incumbent upon the Director to apply the appropriate standard of review of the Initial Order *as a summary judgment order*, not a default order.

While RCW 34.05.135 and WAC 10-08-200(13) clearly provide for disposition of a case by summary judgment, there is no specific provision in the Administrative Procedures Act or the Model Rules of Administration setting forth the standard of review of an initial order granting summary judgment by a reviewing officer, as opposed to any other initial order. Rather, the Administrative Procedures Act simply expresses certain requirements as to the review by the

Director of initial orders, *regardless* of what type they are. In this regard, RCW 34.05.464 (4) declares:

“The officer reviewing the initial order (including the agency head reviewing an initial order) is, for the purposes of this chapter, termed the reviewing officer. The reviewing officer *shall* exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, *except to the extent that the issues subject to review are limited by a provision of law* or by the reviewing officer upon notice to all the parties. . . .”

[Emphasis added]

A reviewing officer (upon a petition for review) may *not* go outside the existing record or consider additional evidence when reviewing a decision by an administrative law judge, unless an agency has adopted regulations permitting a reviewing officer to do so.⁶ This is so, even though RCW 34.05.464(4) requires the reviewing officer to exercise decision-making as if he or she had presided over the hearing.⁷

This standard of review, when applied to a summary judgment case, is consistent with what the Washington appellate courts have said with respect to the standard of review of summary judgments granted by trial courts in general civil matters. In a general civil matter, the Court of Appeals reviews a summary judgment de novo and engages in the same inquiry as a trial court.⁸

⁶ *Towle v. Washington State Dep't of Fish and Wildlife*, 94 Wn.App. 196, 206, 971 P.2d 591, 596 (1999).

⁷ *Towle, supra*.

⁸ *Keith v. Allstate Indem. Co.*, 105 Wn.App. 251, 19 P.3d 1077 (2001).

However, on review of an order granting a motion for summary judgment by a trial court, the appellate court will consider *only* evidence and issues called to the attention of the trial court.⁹

Based upon the required standard of review as set forth above, the Director has no authority to consider the contents of Respondent’s Petition for Review as new evidence unless the administrative rules of the Department permit the Director to do so. They do not. In general, the Department has adopted the Model Rules of Administrative Procedure.¹⁰ Moreover, a review of the Department’s specific Rules of Adjudicative Procedure (which supplement the Model Rules) reveals *no* authority for the Director or any other reviewing officer of the agency to consider additional evidence when reviewing a decision by an administrative law judge.¹¹

Therefore, in proper reliance only upon the OAH record, the Director – reviewing the evidence as if he had been the presiding officer – must find that there was no genuine issue of material fact before ALJ Hale and that the Division was entitled to summary judgment as a matter of law.¹² Based upon this standard and in the absence of any appearance or written opposition to the Motion for Summary Judgment by Respondent, ALJ Hale correctly issued an order granting summary judgment and containing the Findings of Fact and Conclusions of Law. If Respondent

⁹ Rules of Appellate Practice (RAP) 9.12; *Green v. Normandy Park*, 137 Wn.App. 665 (2007); *Riojas v. Grant County Public Utility Dist.*, 117 Wn.App. 694, 72 P.3d 1093 (2003); *Sorrel v. Eagle Healthcare, Inc.*, 110 Wn.App. 290, 38 P.3d 1024 (2002). RAP 9.12 declares: “On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court. . . .”

¹⁰ See WAC 208-08-020(1).

¹¹ See Department’s Rules of Adjudicative Procedure, Ch. 208-08 WAC.

¹² After the party moving for summary judgment submits adequate affidavits, the nonmoving party must set out specific facts sufficiently rebutting the moving party’s contentions and disclosing the existence of a material issue of fact. In doing so, the nonmoving party may not rely on speculation, argumentative assertions that unresolved factual issues remain, or having its affidavits accepted at face value. *Heath v. Uraga*, 106 Wn.App. 506, 24 P.3d 413 (2001).

had any issues of material fact to show, the time to have done so was at the hearing on December 15, 2010, and by way of *evidentiary* affidavit or declaration, or legal argument, or both.

As for the arguments set forth in the Petition for Review, the Director agrees with AAG Clark, as set forth in the Division’s Reply, that the Petition for Review is legally deficient under the governing Model Rules of Administrative Procedure.¹³ Respondent has failed to specify the portions of the Initial Order to which he takes exception and has further failed to refer to evidence in the record.

In the Petition for Review, Respondent does make one curious statement, as follows:

“In regard to the FINDING OF FACT section, number 7, letters A through F, The [sic] listed forms would have only been signed by me due to the fact that the President Killion who was licensed as a loan originator was incarcerated at the time. Those forms do not designate me [the Respondent] as the ‘Loan Originator’, they are [sic] additional items that needed to be included in the file.”

However, in making this assertion, Respondent does not state any legal authority that would excuse his legal conduct merely because Mr. Killion, a licensed loan originator, is incarcerated. The Model Rules of Administrative Procedure¹⁴ require that a petition for review be supported by only evidence that is in the OAH record.

Accordingly, Respondent has demonstrated no reason whatsoever for the Director to reverse the Initial Order granting summary judgment.

¹³ WAC 10-08-211(3) is specific. It declares: “The petition for review shall specify the portions of the initial order to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition.”

¹⁴ See again, WAC 10-08-211(3).

II. FINAL DECISION & ORDER

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

A. The Director hereby affirms ALJ Hale's grant of Summary Judgment against the Respondent, NICK PFEIFER, and hereby adopts and incorporates herein by this reference the Findings of Fact and Conclusions of Law of the Initial Order.

B. IT IS HEREBY ORDERED, That:

1. Respondent NICK PFEIFER is prohibited from participation in the conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a period of five (5) years.
2. The license of Respondent PREFERRED FINANCIAL GROUP, INC. to conduct the business of a mortgage broker is revoked;
3. Respondent NICK PFEIFER shall pay to Washington State Department of Financial Institutions a fine of Four Thousand Dollars (\$4,000.00); and
4. Respondent NICK PFEIFER shall pay to Washington State Department of Financial Institutions investigation costs of Two Hundred Forty Dollars (\$240.00).
5. Respondent NICK PFEIFER is required to pay a total of Thirty One Thousand Four Hundred Forty Dollars (\$31,440.00) in restitution to certain borrowers, as follows:
 - a. Mark Deisher - \$8,199.15
 - b. William Ford - \$6,573.54
 - c. John Sangder - \$4,804.95
 - d. Ruth Silue - \$11,862.42

In this regard, Respondent NICK PFEIFER shall pay each of the above-named named borrowers directly. If Respondent NICK PFEIFER is unable to locate and/or pay any of the above-named borrowers directly, the funds owed any of the above-named borrowers shall be delivered to the Washington State Department of Revenue where said funds will thereafter escheat to the State of Washington as unclaimed property in accordance with Washington State statute.

C. Reconsideration. Pursuant to RCW 34.05.470, Respondents have the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The

Petition must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of the Final Order upon Respondents. The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter.

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

D. 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.

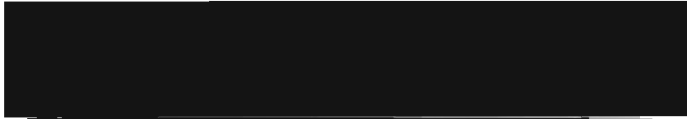
E. Judicial Review. Respondents have the right to petition the superior court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

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

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

DATED this 16th day of January, 2012.

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS



SCOTT JARVIS
DIRECTOR

A handwritten signature in black ink, appearing to be 'S. Jarvis', written over the redacted area.

MAILED

DEC 16 2010

VANCOUVER OFFICE OF
ADMINISTRATIVE HEARINGS

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

In Re:

Nick Pfeifer,

Respondent

Docket No. 2010-DFI-0046
DFI No.: C-09-410-09-SC01

**INITIAL DECISION AND ORDER ON
MOTION FOR SUMMARY JUDGMENT**

License - Loan Originator

Gina L. Hale, Assistant Deputy Chief - Administrative Law Judge (ALJ), conducted a prehearing conference on December 15, 2010. Oral arguments were heard on the Department's Motion for Summary Judgment. **The Respondent**, Nick Pfeifer, failed to appear and is in Default. Charles Clark, Assistant Attorney General, appeared and represented **The Department of Financial Institutions (Department)**.

This decision is based on the written submissions, attached Exhibits, and oral arguments of the parties.

DECISION SUMMARY

The Department's Motion for Summary Judgment is **Granted**.

FINDINGS OF FACT

1. On or about March 31, 2009, Examiner-in-Charge, Sam Stenger, produced a Report of Investigation for the Department of Financial Institutions - Division of Consumer Services. The company investigated was Killion Enterprises, d.b.a. Spartan Mortgage. A result of the investigation was that the Department became aware that the mortgage company had used eight unlicensed loan originators. One of the eight individuals was the Respondent, Nick Pfeifer. Exhibit 1.
2. On December 9, 2009, the Department issued a Statement of Charges and Notice of Intention to enter an Order to Prohibit from Industry, Impose Fine, Collect Investigation Fee, and Order Restitution against the Respondent.
3. On April 12, 2010, the Department received the Respondent's Application for Adjudicative Hearing and forwarded it to the Office of Administrative Hearings. A prehearing conference was scheduled for September 9, 2010, and both parties appeared.

4. At the September 9, 2010, prehearing conference, the Department representative informed the Tribunal of its intent to submit a Motion for Summary Judgment. The parties were given notice of the briefing and argument schedule. Oral arguments were set for Wednesday, December 15, 2010, at 1:15 p.m. Only the Department representative appeared and gave their oral arguments on the record in support of the Motion for Summary Judgment.

5. A review of the Department's records for the Respondent showed that there was no evidence that the Respondent had a loan originator license, or that he had ever applied for one. Declaration of William Halstead, the Department's Financial Legal Examiner.

6. The Respondent was an employee of Killion Enterprises and completed a minimum of four loans involving Washington residents where he served as the loan originator between 2008, and 2009. The four Washington borrowers were: Mark Deisher, William Ford, John Sangder, and Ruth Silue.

7. The documentation presented by the Department showed that the Respondent:

- a) completed the property questionnaires as the loan originator,
- b) entered file notes as the loan originator,
- c) completed the processing analysis worksheet as the loan originator,
- d) signed the mortgage loan origination agreement as the loan originator on behalf of Spartan Mortgage,
- e) signed the Uniform Residential Loan Application as the loan originator on behalf of Spartan Mortgage, and
- f) signed the HUD/VA Addendum to Uniform Residential Loan Application forms as the loan originator on behalf of Spartan Mortgage.

The documents which note the Respondent as the loan originator and the proceeds the company received for the transactions with each of the four borrowers are: Mark Deisher - Exhibits 2 - 6; William Ford - Exhibits 7 - 13; John Sangder - Exhibits 14 - 19; and Ruth Silue - Exhibits 20 - 28.

8. Transactions with the four borrowers generated income to the company in the following amounts: Mark Deisher - \$8,199.15; William Ford - \$6,573.54; John Sangder - \$4,804.95; and Ruth Silue - \$11,862.42.

9. Because the Respondent performed services as a loan originator without being licensed, the Department is seeking the following sanctions:

- a) That the Respondent be prohibited from participation in the conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a period of five (5) years;

b) That the Respondent be required to pay a fine in the amount of \$4,000;

c) That the Respondent be required to pay the investigation costs of \$240; and

d) That the Respondent be required to pay a total of \$31,440.06 in restitution to the borrowers Mark Deisher - \$8,199.15; William Ford - \$6,573.54; John Sangder - \$4,804.95; and Ruth Silue - \$11,862.42.

CONCLUSIONS OF LAW

1. The undersigned Administrative Law Judge (ALJ) has jurisdiction to hear this matter pursuant to Chapter 19.146.230 Revised Code of Washington (RCW) and RCW 34.05.

2. Under the provisions of RCW 19.146, the Department of Financial Institutions is responsible for the administration of the Mortgage Brokers Act.

3. Part of the Department's responsibility in administering the Act, is to ensure that mortgage brokers and loan originators operating within the State of Washington are properly licensed. Where individuals are found to be conducting business without the proper licensure, the Department is required to take action against that individual.

4. In the present case, the Department has provided documentation showing: a) that there is no evidence that the Respondent was ever licensed in the State of Washington to work as a loan originator, b) that the Respondent did function as a loan originator in the business transactions of four Washington residents, and c) that the Respondent's company received financial compensation for those unlicensed services.

5. The Department has moved for Summary Judgement in the present case. It has met its burden by showing that there are no material facts at issue. The documentation presented has established the Department's case.

6. At issue was whether the Respondent performed unlicensed loan origination. The Department has established that he did by showing the documentation associated with the four borrowers during the years 2008, and 2009. The Department also showed that there was no record that the Respondent had ever even applied for a license prior to or during that period.

7. The Respondent's actions are a violation of RCW 19.146.200 which requires that the loan originator be licensed.

8. The Respondent's actions are a violation of RCW 19.146.0201(1), (2), and (3) which state that where a loan originator operates without a license, they are deemed to have engaged in fraud and misrepresentation, unfair or deceptive practices, and to have obtained property by fraud.

9. The Department has requested sanctions in four areas. The undersigned concludes that they are appropriate sanctions and they will be affirmed.

DECISION AND ORDER

1. The Department's Motion for Summary Judgment is **GRANTED**.
2. The Respondent is prohibited from participation in the conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a period of five (5) years.
3. The Respondent is required to pay a fine in the amount of \$4,000.
4. The Respondent is required to pay the investigation costs of \$240.
5. The Respondent is required to pay a total of \$31,440.06 in restitution to the borrowers Mark Deisher - \$8,199.15; William Ford - \$6,573.54; John Sangder - \$4,804.95; and Ruth Silue - \$11,862.42. The Respondent is to pay each borrower directly. If the Respondent is unable to locate and / or pay the borrower directly, the funds shall be sent to the Department of Revenue where they will escheat to the State of Washington as unclaimed property.

Served on the date of mailing.



GINA L. HALE
Assistant Deputy Chief
Administrative Law Judge

cc: Nick Pfeifer, Respondent
Charles E. Clark, AAG
James R. Brusselback, Dept Contact

NOTICE TO THE PARTIES

Pursuant to RCW 34.05.464 and WAC 10-08-211, any party to this proceeding may file a petition for review of this initial order. You must file your petition for review with the Director of the Department of Financial Institutions, PO Box 41200, Olympia, WA 98504-1200 [mailing address] or Department of Financial Institutions, 150 Israel Rd. S.W., Tumwater, WA 98501 [physical address]. The petition for review must be filed within **twenty (20)** days from the date this initial order was mailed to you. A copy of the petition for review must be sent to all parties of record. Your petition for review must specify the portions of the initial order with which you disagree, and must refer to the evidence in the record which supports your position.

Any party to this proceeding may file a reply to a petition for review. The reply must be filed with the Director of the Department of Financial Institutions at the address above within ten (10) days from the date the petition for review was mailed.

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

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

NICK PFEIFER, Unlicensed Loan Originator,
Respondent.

NO. C-09-410-09-SC01

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

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INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act)¹. After having conducted an investigation pursuant to RCW 19.146.235 and .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 Nick Pfeifer (Respondent Pfeifer) worked for Killion Enterprises Inc. d/b/a Spartan Mortgage² as a loan originator at all times relevant to this Statement of Charges. Respondent Pfeifer 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 2008 and 2009, Respondent Pfeifer was required to obtain and maintain a loan originator license before originating any residential mortgage loans. Respondent Pfeifer 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 Pfeifer conducted the business of a loan originator from 12178 SW Garden Place, Building 3, Park 217, Tigard, Oregon 97223, between, on or about, May 2,

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 Pfeifer to originate loans while not licensed.

1 2008, and January 27, 2009. Respondent Pfeifer originated at least 4 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 Pfeifer is
20 in apparent violation of RCW 19.146.0201(1), (2), and (3) for directly or indirectly employing a scheme, device
21 or artifice to defraud or mislead borrowers or lenders or any person, for engaging in an unfair or deceptive
22 practice 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 Pfeifer 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 518994, 12899167, 13043583, and 0000593110.

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 Nick Pfeifer 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 Nick Pfeifer pay a fine of \$4,000;

- 1 **4.3** Respondent Nick Pfeifer pay an investigation fee, which as of the date of these charges is \$240 calculated
2 at \$48 per hour for 5 staff hours devoted to the investigation; and
- 3 **4.4** Respondent Nick Pfeifer 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 DEBORAH BORTNER
14 Director Division of Consumer Services
15 Department of Financial Institutions



16 Presented by:



17 WILLIAM HALSTEAD
18 Financial Legal Examiner

19 Approved by:



20 JAMES R. BRUSSELBACK
21 Enforcement Chief