

Terms Completed

ORDER SUMMARY – Case Number: C-10-111

Name(s): Watermark Group Inc, The;
Michael Kenneth Knapp

Order Number: C-10-111-12-FO01

Effective Date: April 26, 2012

License Number: DFI: 30217 [NMLS: 7088] -Watermark
Or NMLS Identifier [U/L] DFI: 30218 [NMLS: 110919] -Knapp
(Revoked, suspended, stayed, application denied or withdrawn)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	\$48	Due: May 26, 2012	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 7/5/12
Fine	\$750	Due: May 26, 2012	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 7/5/12
Assessment(s)	\$0	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$0	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$0	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N n/a		
No. of Victims:		n/a		

Comments:



STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

BRIEF ADJUDICATIVE PROCEEDING

IN THE MATTER OF INVESTIGATING
Whether there has been a violation of the
Washington Mortgage Broker Practices Act (Ch.
19.146 RCW) by:

THE WATERMARK GROUP, INC.; MICHAEL
KNAPP, Designated Broker ,

Respondent.

DCS – BAP – C-10-111-12-FO01

FINAL DECISION AND ORDER

THIS MATTER having come before SCOTT JARVIS, the Director (“Director”) of the Department of Financial Institutions (“Department”), in relation to a Statement of Charges and Notice of Intention to Enter an Order to Impose Fine and Collect Investigation Fee (“Statement of Charges”) under the Washington Mortgage Broker Practices Act, Chapter 19.146 RCW (“Act”), against THE WATERMARK GROUP, INC., and MICHAEL KNAPP, its Designated Broker (“Respondents”); and

THIS MATTER, at the option of Respondents, having been previously referred to Joseph M. Vincent, General Counsel for the Department, in his capacity as Brief Adjudicative Proceeding (“BAP”) Hearing Officer; and the BAP Hearing Officer having reviewed the record, including all submissions of the parties under the prescribed BAP procedures which were duly noticed, and having thereafter issued on April 4, 2012, an Initial Decision and Order (“Initial Order”); and it also appearing that more than twenty (20) days has elapsed since service by mail without any petition for review by Respondents or the Department’s Division of Consumer Services (“Division”), which issued the Statement of Charges:

NOW THEREFORE, the Director issues the following Findings of Fact, Conclusions of Law, and Final Decision and Order:

1.0 FINDINGS OF FACT

- 1.1 The Director hereby re-affirms and incorporates by reference in this Final Decision and Order all Findings of Fact of the Initial Order.
- 1.2 It appears from the record that the Initial Order duly served by mail on Respondents on April 4, 2012, and their legal representative of record, Christopher R. Ambrose, Esq.
- 1.3 More than twenty (20) days has elapsed since service by mail without any petition for review by Respondents or the Department's Division of Consumer Services ("Division"), which issued the Statement of Charges.
- 1.4 The Initial Order was accompanied by notice to the parties and to Respondents' legal representative that the parties had twenty (20) days from service by mail of the Initial Order to file a Petition for Review.

2.0 CONCLUSIONS OF LAW

Based upon the Findings of Fact above, the Director concludes, as follows:

- 2.1 In the absence of a Petition for Review by either or both parties within twenty (20) days of service by mail of an Initial Order, pursuant to Washington Administrative Procedures Act, Chapter 34.05 RCW, and WAC 10-08-211, the Director is authorized to issue a Final Decision and Order.
- 2.2 In its failure to file the 2009 MBAR or timely file a Mortgage Broker Closure Report in lieu thereof, Respondent violated RCW 19.146.290(1) and WAC 208-660-400(1), (2), and (3). Moreover, WAC 208-660-400(12) makes it clear that a licensee must inform the Department within twenty (20) days of ceasing to do business in Washington State.
- 2.3 Pursuant to RCW 19.146.220(2)(e), the Department may impose fines on a Mortgage Broker Licensee for any violation of the Act.

- 2.4 Pursuant to RCW 19.146.228(2), WAC 208-660-520 and WAC 208-660-550(4), upon completion of any investigation of the books and records of a licensee, the Department will furnish to the licensee a billing to cover the cost of investigation.
- 2.5 The investigative charge will be calculated at the rate of \$48 per hour for each staff person of the Department devoted to the investigation.
- 2.6 In and of itself, the fact that one has gone out of business is not a basis for failure to account for one's loan activity during a particular year in which one did engage in business in Washington State and one was required by statute to file an MBAR.
- 2.7 The Director finds that the allegations set forth in the Statement of Charges are supported by substantial and competent evidence.
- 2.8 However, the Director concurs in the judgment of the BAP Hearing Officer that it would be inappropriate in this case to impose a fine of \$3,000, which has otherwise generally been the policy of the Division to impose with such latent filings and where there has been significant enough loan activity, such as shown by the Mortgage Broker Closure Report referenced in the Initial Order's Findings of Fact.
- 2.9 Based upon the Findings of Fact, the Director concludes that a fine of \$750 is appropriate.

3.0 FINAL DECISION AND ORDER

Based upon the Findings of Fact and Conclusions of Law set forth above, IT IS HEREBY ORDERED THAT:

- 3.1 Fine Imposed. Respondent, THE WATERMARK GROUP, INC., and MICHAEL KNAPP, pay to Washington State Department of Financial Institutions a fine of Seven Hundred Fifty Dollars (\$750.00).
- 3.2 Investigative Fee. Respondent, THE WATERMARK GROUP, INC., and MICHAEL KNAPP, pay to Washington State Department of Financial Institutions an investigative fee of Forty-Eight Dollars (\$48.00).
- 3.3 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.

3.4 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.

3.5 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 information regarding the requirements for filing a Petition for Judicial Review, see the Notice to Parties following the Director's signature below.]


3.6 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 fines, fees and restitution imposed herein.

3.7 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 26th day of April, 2012, at Tumwater, Washington.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By


SCOTT JARVIS
Director



STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

BRIEF ADJUDICATIVE PROCEEDING

IN THE MATTER OF INVESTIGATING
Whether has been a violation of the Washington
Mortgage Broker Practices Act (Ch. 19.146 RCW)
by:

THE WATERMARK GROUP, INC.; MICHAEL
KNAPP, Designated Broker ,

Respondent.

DCS – BAP – C-10-111-10-10

INITIAL DECISION AND ORDER

THIS MATTER having come before Joseph M. Vincent, General Counsel for the Department of Financial Institutions (“Department”), sitting in his capacity as Presiding Officer (“Presiding Officer”) for Brief Adjudicative Proceedings (“BAP”) for the Division of Consumer Services (“Division”), in relation to a Statement of Charges and Notice of Intention to Enter an Order to Impose Fine and Collect Investigation Fee (“Statement of Charges”) under the Washington Mortgage Broker Practices Act, Chapter 19.146 RCW (“Act”), against THE WATERMARK GROUP, INC., and MICHAEL KNAPP, its Designated Broker (“Respondents”);

NOW THEREFORE, the Presiding Officer issues the following Findings of Fact, Conclusions of Law, and Initial Decision and Order:

1.0 FINDINGS OF FACT

Based upon the Record, the following facts are undisputed as between the Division and the Respondent:

- 1.1 In 2008 and 2009, Respondent, The Watermark Group, Inc. (“Watermark”), was licensed as a mortgage broker with the Division.
- 1.2 During 2008 and 2009, Michael Knapp (“Knapp”) was Watermark’s designated broker.

- 1.3 Respondents were required to file or cause to be filed a Mortgage Broker Annual Report (“MBAR”) of mortgage activity with the Division on or before March 31st of every year following any year in which it held a mortgage broker license.
- 1.4 As of 2009 and 2010, licensees knew or should have known that this policy would be enforced. This policy went into effect on January 1, 2007, so the 2007 MBAR was due to the Division no later than March 31, 2008.
- 1.5 Subsequently, the 2008 MBAR was due to the Division by March 31, 2009, but the Division did not receive it in a timely manner.
- 1.6 The 2009 MBAR was due to the Division by March 31, 2010, but the Division did not receive it.
- 1.7 The Department did not issue its Statement of Charges until April 22, 2010, at a time when the Respondent had still not filed its 2009 MBAR.
- 1.8 James Brusselback, Enforcement Chief of the Division, assigned this matter to Joseph M. Vincent, the BAP Hearing Officer, by letter dated August 16, 2010.
- 1.9 By letter dated August 18, 2010, the BAP Hearing Officer issued to Respondent, care of Designate Broker, a Notice of Assignment and Time to File Additional Materials, from the Presiding Officer, giving Respondent until September 1, 2010, to file additional materials.
- 1.10 On or before September 1, 2010, the Presiding Officer received a letter dated August 31, 2010 (“Response to Statement of Charges”), from the Respondents’ legal representative, Christopher R. Ambrose (“Legal Representative”), together with a Declaration from Knapp (“Knapp Declaration”).
- 1.11 The Presiding Officer finds that one (1) staff hour was devoted to this investigation.
- 1.12 The Presiding Officer finds that the Legal Representative’s Response to the Statement of Charges and the Knapp Declaration present mitigating factors that have a relevant bearing on whether the amount of fine sought by Division in these types of cases is appropriate to this particular case.
- 1.13 Generally in cases of this type, the Division has sought a fine of \$100 per day up to a maximum of \$1,500 for late filing of an MBAR in which the filing is made prior to

the filing of a Statement of Charges. In the same type of cases, the Division has sought a fine of \$100 per day up to a maximum of \$3,000 for failure to file an MBAR until after a Statement of Charges is issued and served.

- 1.14 However, in the absence of other extrinsic evidence of bad faith, the Department also has generally followed a policy of not imposing any fine where the MBAR (or other evidence) for the year in question reasonably demonstrates, based upon the good faith representations of the licensee, that there has been no loan activity in Washington State.
- 1.15 One of the salient (and reasonable) justifications for the imposition of fines has been the consistent policy of the Division to not bring Statement of Charges in these cases unless the licensee in question has either untimely filed and/or failed to file its MBAR (or equivalent) for two consecutive years.
- 1.16 The MBAR is a tool for measuring the activity of Mortgage Broker Licensees so that the Division may allocate its scarce resources in determining such matters as which Mortgage Broker Licensees ought to be examined. It can be used as a tool to measure whether the files of a licensee who has gone out of business ought to be examined, since it is sometimes necessary to examine the loan files of persons who have ceased to be licensees in order to protect the general public. This is so, because the Department has the authority to impose industry bans for a period of years in the regrettable instances in which examinations (including those of closed businesses) reveal wrongful conduct in violation of the Washington Mortgage Broker Practices Act. Such files of closed businesses are accessible because of the duty of former licensee to maintain records for a period of five (5) after closing.
- 1.17 In short, the MBAR is not just an annual report in the manner of renewing one's corporation license with the Secretary of State. Because of the MBAR's purpose as set forth above, it is essential that it be filed – and filed timely.
- 1.18 Respondents filed a Mortgage Broker Closure Report (which, although untimely, was accepted in this case in lieu of the 2009 MBAR) on or about August 10, 2010, which was dated August 9, 2010, disclosing brokered residential mortgage loan

activity in Washington State for the year 2009 totaling a dollar volume of \$2,326,415, and comprising twelve (12) loans.

- 1.19 Not only was this an untimely filing of a document in lieu of the 2009 MBAR; it also demonstrated that there was significant enough loan activity to support the imposition of a fine for untimely filing, consistent with the Division's policy as stated above.
- 1.20 Notwithstanding the above, it appears from the Legal Representative's Response to the Statement of Charges and the Knapp Declaration that (1) Watermark had no loan activity in Washington State during 2010 (the year in which the 2009 MBAR was to be filed), (2) Watermark was in the process of closing its entire operation, and (3) Watermark appears to have had some genuine confusion (even though not legally excusable) in timely filing its closure report in 2010 in a manner which would have sufficed in lieu of the timely filing of the 2009 MBAR.
- 1.21 Knapp's Declaration indicates that Watermark is no longer a going concern in Washington State and has been dissolved as a business everywhere.

2.0 CONCLUSIONS OF LAW

Based upon the Findings of Fact above, the Presiding Officer concludes, as follows:

- 2.1 In its failure to file the 2009 MBAR or timely file a Mortgage Broker Closure Report in lieu thereof, Respondent violated RCW 19.146.290(1) and WAC 208-660-400(1), (2), and (3). Moreover, WAC 208-660-400(12) makes it clear that a licensee must inform the Department within twenty (20) days of ceasing to do business in Washington State.
- 2.2 Pursuant to RCW 19.146.220(2)(e), the Department may impose fines on a Mortgage Broker Licensee for any violation of the Act.
- 2.3 Pursuant to RCW 19.146.228(2), WAC 208-660-520 and WAC 208-660-550(4), upon completion of any investigation of the books and records of a licensee, the Department will furnish to the licensee a billing to cover the cost of investigation.
- 2.4 The investigative charge will be calculated at the rate of \$48 per hour for each staff person of the Department devoted to the investigation.

2.5 In and of itself, the fact that one has gone out of business is not a basis for failure to account for one's loan activity during a particular year in which one did engage in business in Washington State and one was required by statute to file an MBAR.

2.6 The Presiding Officer finds that the allegations set forth in the Statement of Charges are supported by substantial and competent evidence.

2.7 However, it would be inappropriate in this case to impose a fine of \$3,000, which has generally been policy of the Division to impose with such latent filings and where there has been significant enough loan activity, such as shown by the Mortgage Broker Closure Report.

2.8 Based upon the Findings of Fact, the Presiding Officer concludes that a fine of \$750 is appropriate.

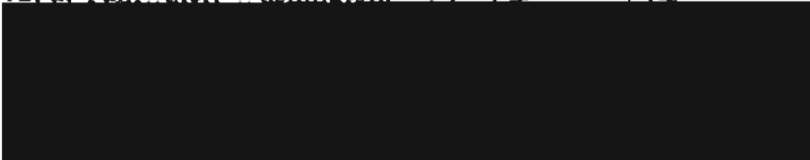
3.0 INITIAL DECISION AND ORDER

Based upon the Findings of Fact and Conclusions of Law set forth above, IT IS HEREBY ORDERED THAT:

3.1 Respondent, THE WATERMARK GROUP, INC., and MICHAEL KNAPP, pay to Washington State Department of Financial Institutions a fine of Seven Hundred Fifty Dollars (\$750.00); and

3.2 Respondent, THE WATERMARK GROUP, INC., and MICHAEL KNAPP, pay to Washington State Department of Financial Institutions an investigative fee of Forty-Eight Dollars (\$48.00).

Dated and mailed on April 4, 2012, at Tumwater, Washington.



Joseph M. Vincent, Presiding Officer
Brief Adjudicative Proceedings
Division of Consumer Services
WASHINGTON STATE DEPARTMENT OF
FINANCIAL INSTITUTIONS

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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:

NO. C-10-111-10-SC01

WATERMARK GROUP INC, THE;
MICHAEL KNAPP, DESIGNATED BROKER,

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO IMPOSE FINE AND COLLECT
INVESTIGATION FEE

Respondents.

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as 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. Watermark Group Inc, The and Michael Knapp, Designated Broker (Respondents) were licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker at all times relevant to the conduct alleged. At all times relevant to the Statement of Charges, Michael Knapp was the Designated Broker for the company.

1.2 Failure to File Mortgage Broker Annual Report. By March 31, 2010, Respondents were required to file an annual report of mortgage broker activity to include the total number of closed loans originated and the total volume of closed loans originated. As of the date of this Statement of Charges Respondents have not filed the 2009 mortgage broker annual report.

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

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

2 **2.1 Requirement to File Mortgage Broker Annual Report.** Based on the Factual Allegations set forth in
3 Section I above, Respondents are in apparent violation of RCW 19.146.290(1), WAC 208-660-250(7) and
4 WAC 208-660-400(1), (2), (3), and (4) for failing to file the mortgage broker annual report.

5 **III. AUTHORITY TO IMPOSE SANCTIONS**

6 **3.1 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(e) the Director may impose fines on a
7 licensee or other person subject to the Act for any violations of the Act.

8 **3.2 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-520, and WAC
9 208-660-550(4), upon completion of any investigation of the books and records of a licensee or other person subject
10 to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of
11 the investigation. The investigation charge will be calculated at the rate of \$48 per hour that each staff person
12 devoted to the investigation.

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

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

- 18 **4.1** Respondents Watermark Group Inc, The and Michael Knapp jointly and severally pay a fine of
19 \$100 per day for every day starting April 1, 2010, until the 2009 Mortgage Broker Annual Report
is filed; and
- 20 **4.2** Respondents Watermark Group Inc, The and Michael Knapp jointly and severally pay an
21 investigation fee, which as of the date of these charges is \$48 calculated at \$48 per hour for one
staff hour devoted to the investigation; and
- 22 **4.3** Respondents Watermark Group Inc, The and Michael Knapp file the 2009 annual report of
23 mortgage broker activity.

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1 **V. AUTHORITY AND PROCEDURE**

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

8 Dated this 22nd day of April, 2010.



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11 **DEBORAH BORTNER**
12 Director
13 Division of Consumer Services
Department of Financial Institutions

14 Presented by:



15 **FATIMA BATIE**
16 Financial Legal Examiner Supervisor

17 Approved by:



18 **JAMES R. BRUSSELBACK**
19 Enforcement Chief

