



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:

EXPRESS LOAN AMERICA INC;  
BRIAN MITCHELL, DESIGNATED BROKER,

Respondents.

No. C-10-145-10-FO

FINAL DECISION AND ORDER

THIS MATTER having come before Scott Jarvis, Director ("Director") of the Department of Financial Institutions ("Department"), after the Initial Decision and Order ("Initial Order") in the above-referenced Brief Adjudicative Proceeding ("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 Express Loan America Inc. and Brian Mitchell, Designated Broker, Respondents ("Respondents"); and more than twenty (20) days having elapsed since service of the Initial Order without Respondent having filed a Petition for Review with the Director, and the time for Petition for Review under WAC 10-08-211 having now expired; and there appearing from the record to be good and sufficient cause for entry of a final decision and order consistent with the Initial Order;


NOW THEREFORE, IT IS HEREBY ORDERED:

1. The Director affirms and incorporates herein by this reference the Findings of Fact and Conclusions of Law contained in the Initial Order.
2. Based upon the Findings of Fact and Conclusions of Law, the Director, as the Final Decision and Order of the Department, AFFIRMS the Initial Decision and Order in this matter, as follows:

- a. Respondents, Express Loan America Inc. and Brian Mitchell, shall, jointly and severally, pay a fine of One Thousand Five Hundred Dollars (\$1,500) as and for untimely filing of the 2009 Mortgage Broker Annual Report; and
  - b. Respondents, Express Loan America Inc. and Brian Mitchell, shall, jointly and severally, pay in addition an investigative fee of Forty Eight Dollars (\$48).
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.
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.
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.]

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.
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 4<sup>th</sup> day of February, 2011, at Tumwater, Washington.

  
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SCOTT JARVIS, Director  
Washington State Department of Financial Institutions

NOTICE TO THE PARTIES

Judicial Review of this Final Decision & Order is available to a party according to the provisions set out in Part V of the Washington Administrative Procedures Act, RCW 34.05.510 through RCW 34.05.598, inclusive. Judicial Review may be made by filing a Petition for Judicial Review (RCW 34.05.6570) within thirty (30) days of the date of the Final Decision and Order, as permitted under RCW 34.05.542(2). The contents of the Petition for Review shall be according to the requirements of RCW 34.05.546.

This is to certify that the above FINAL DECISION AND ORDER has been served upon the following parties on February 4, 2011, by depositing a copy of same in the United States mail, postage prepaid.

  
\_\_\_\_\_  
SUSAN PUTZIER

**Mailed to the following:**

Brian Mitchell  
Express Loan America Inc.  
1344 NW Ithaca Ave  
Bend, OR 97701

James R. Brusselback, Enforcement Chief  
Division of Consumer Services  
PO Box 41200  
Olympia, WA 98504-1200

State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES

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:

EXPRESS LOAN AMERICA INC;  
BRIAN MITCHELL, DESIGNATED BROKER,

Respondents.

DCS – BAP – C-10-145-10-IO

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 State 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 Express Loan America Inc. and the Designated Broker, Brian Mitchell, the Respondents (“Respondents”);

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

1.0 RECORD

The Presiding Officer has considered the following material documents, which comprise the relevant record in this matter (“Record”):

- 1.1 Statement of Charges, dated May 3, 2010;
- 1.2 Request for Brief Adjudicative Proceeding (“BAP”), received by the Division on June 28, 2010;
- 1.3 Letter from James Brusselback, Enforcement Chief of the Division, dated June 29, 2010, acknowledging Request for Brief Adjudicative Proceeding, and directing assignment to BAP Hearing Officer;

- 1.4 Notice of Assignment and Time to File Additional Materials, from the BAP Hearing Officer, dated July 2, 2010;
- 1.5 2009 Mortgage Broker Annual Report dated June 15, 2010;
- 1.6 Department's Resolution and Closure of Complaint dated October 22, 2009, evidencing prior failure to file or untimely filing of 2008 Mortgage Broker Annual Report; and
- 1.7 Additional materials (if any) of record that Respondents filed (or may have filed) in response to Notice of Assignment and Time to File Additional Materials.

## 2.0 FINDINGS OF FACT

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

- 2.1 Respondents was required to file a Mortgage Broker Annual Report ("MBAR") of mortgage activity with the Division on or before March 31<sup>st</sup> of every year following any year in which it held a mortgage broker license.
- 2.2 The 2009 MBAR was due to the Division by March 31, 2010, but the Division did not receive it timely. The 2009 MBAR was not received until June 25, 2010.
- 2.3 The Department did not issue its Statement of Charges until May 3, 2010.
- 2.4 Respondents were on notice of the importance and legal requirement of timely filing of an MBAR on or before March 31<sup>st</sup> of each year for as long as Respondents remain a licensee and designated broker, respectively.
- 2.5 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 is not an "annual report" in the manner, for example, of renewing one's corporation license with the Secretary of State. Because of the MBAR's purpose, it is essential that it be filed – and filed timely. Every licensee is on notice of this distinction by statute and by rule.
- 2.6 The record indicates that this is the second consecutive year in which Respondents failed to timely file an MBAR.

- 2.7 Based upon the untimely filed 2009 MBAR, the Respondents generated loan volume in Washington State in calendar 2009 in the amount of \$2,885,554.
- 2.8 The Presiding Officer finds that under the circumstances, a fine of \$1,500 is reasonable and appropriate in relation to the nature of the violation by Respondents, taking into consideration the amount of loan volume of the Respondents in Washington State for the calendar year 2009 (assuming the accuracy of the 2009 MBAR).
- 2.9 One staff hour was devoted to this investigation.

3.0 CONCLUSIONS OF LAW

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

- 3.1 In its failure to timely file the 2008 MBAR, Respondents violated RCW 19.146.290(1) and WAC 208-660-400(1), (2), (3) and (4).
- 3.2 Pursuant to RCW 19.146.220(2)(e), the Department may impose fines on a Mortgage Broker Licensee for any violation of the Act.
- 3.3 A fine of \$1,500 is permitted under the Act.
- 3.4 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.
- 3.5 The investigative charge will be calculated at the rate of \$48 per hour for each staff person of the Department devoted to the investigation.

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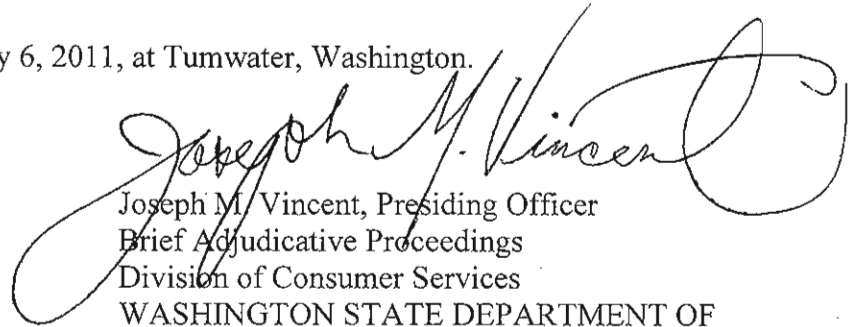
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4.0 INITIAL DECISION AND ORDER

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

- 4.1 Respondents, Express Loan America, Inc. and Brian Mitchell, pay a fine of \$1,500 as and for untimely filing of the 2009 MBAR; and
- 4.2 Respondents, Express Loan America, Inc. and Brian Mitchell, pay in addition an investigative fee of \$48.00.

Dated and mailed on January 6, 2011, at Tumwater, Washington.



Joseph M. Vincent, Presiding Officer  
Brief Adjudicative Proceedings  
Division of Consumer Services  
WASHINGTON STATE DEPARTMENT OF  
FINANCIAL INSTITUTIONS  
P.O. Box 41200  
Olympia, Washington 98504-1200  
Phone: (360) 902-0516  
E-Fax: (360) 704-7036

## FURTHER APPEAL RIGHTS

Under the Washington Administrative Procedures Act, Chapter 34.05 RCW, and WAC 10-08-211, any party to an adjudicative proceeding may file a *Petition for Review* of this Initial Decision and Order. Any *Petition for Review* shall be filed with the Director of the Department of Financial Institutions within twenty (20) days of service of the Initial Decision and Order. **The deadline to file a Petition for Review is January 26, 2011.**

### **Address for filing the Petition for Review:**

Scott Jarvis, Director  
Washington State Department of Financial Institutions  
P.O. Box 41200  
Olympia, Washington 98504-1200

A copy of any such *Petition for Review* must also be served upon the Division of Consumer Services, Washington State Department of Financial Institutions, P.O. Box 41200, Olympia, Washington 98504-1200, at the time the *Petition for Review* is filed with the Director.

A *Petition for Review* shall specify the portions of the *Initial Decision and Order* to which exception is taken and shall refer to the evidence of record which is relied upon to support the *Petition for Review*. Any party may file a reply to a *Petition for Review*. Replies must be filed with the Director within ten (10) days of the date of the service of the *Petition for Review*, and copies of the reply must be served upon all other parties or their representatives at the time the reply is filed with the Director.

At the time for filing a *Petition for Review* has elapsed, the Director of the Washington State Department of Financial Institutions will issue a *Final Decision and Order* in this matter. In accordance with RCW 34.05.470 and WAC 10-08-215, any *Petition for Reconsideration* of such *Final Decision and Order* must be filed with the Director within ten (10) days of the service of the *Final Decision and Order*. **NOTE: *Petitions for Reconsideration* do not stay the effectiveness of the *Final Decision and Order*.**

*Judicial Review* of the *Final Decision and Order* is available to a party according to the provisions set out in the Washington Administrative Procedures Act, at RCW 34.05.570.



CERTIFICATE OF SERVICE

I, Susan Putzier, certify that I personally delivered or mailed a copy of the Initial Decision and Order to parties named below at their respective addresses, postage pre-paid, on the date stated hereinabove.

  
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***Mailed to the following:***

Brian Mitchell  
Express Loan America, Inc.  
1344 NW Ithaca Ave.  
Bend, OR 97701

James R. Brusselback  
Enforcement Chief  
Division of Consumer Services  
PO Box 41200  
Olympia, WA 98504-1200

1 **DEPARTMENT OF FINANCIAL INSTITUTIONS**  
2 **DIVISION OF CONSUMER SERVICES**

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

6 EXPRESS LOAN AMERICA INC;  
7 BRIAN MITCHELL, DESIGNATED BROKER,

8 Respondents.

NO. C-10-145-10-SC01

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

9 **INTRODUCTION**

10 Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial  
11 Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the  
12 Mortgage Broker Practices Act (Act). After having conducted an investigation pursuant to RCW 19.146.235, and  
13 based upon the facts available as the date of this Statement of Charges, the Director, through his designee, Division  
14 of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

15 **I. FACTUAL ALLEGATIONS**

16 **1.1 Respondents.** Express Loan America Inc was licensed by the Department of Financial Institutions of  
17 the State of Washington (Department) to conduct business as a mortgage broker at all times relevant to the  
18 conduct alleged. At all times relevant to the Statement of Charges, Brian Mitchell was the Designated Broker  
19 for the company.

20 **1.2 Failure to File Mortgage Broker Annual Report.** By March 31, 2010, Respondents were required to  
21 file an annual report of mortgage broker activity to include the total number of closed loans originated and the  
22 total volume of closed loans originated. As of the date of this Statement of Charges Respondents have not filed  
23 the 2009 mortgage broker annual report.

24 **1.3 Failure to File Mortgage Broker Closure Form.** Respondents are required to file a completed  
25 closure form and submit a surrender request through the NMLSR. As of the date of this Statement of Charges,  
Respondents have not filed a completed closure form or submitted a surrender request through the NMLSR.

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

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 **2.2 Requirement to File Mortgage Broker Closure Form.** Based on the Factual Allegations set forth in  
6 Section I above, Respondents are in apparent violation of WAC 208-660-163(18) for failing to submit a  
7 surrender request through the NMLSR or failing to submit a completed departmental closure form.

8 **III. AUTHORITY TO IMPOSE SANCTIONS**

9 **3.1 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(e) the Director may impose fines on a  
10 licensee or other person subject to the Act for any violations of the Act.

11 **3.2 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-520, and WAC  
12 208-660-550(4), 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 **IV. NOTICE OF INTENTION TO ENTER ORDER**

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

- 21 **4.1** Respondents Express Loan America Inc and Brian Mitchell jointly and severally pay a fine of  
22 \$100 per day beginning April 1, 2010, until the date the 2009 Mortgage Broker Annual Report is  
23 filed; and
- 24 **4.2** Respondents Express Loan America Inc and Brian Mitchell jointly and severally pay an  
25 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
- 4.3** Respondents Express Loan America Inc and Brian Mitchell file the 2009 annual report of  
mortgage broker activity.

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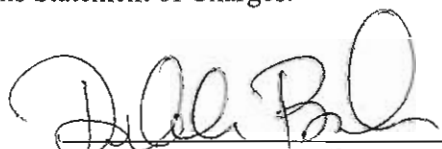
4.4 Respondents Express Loan America Inc and Brian Mitchell submit a surrender request through NMLSR and submit a completed departmental closure form.

4.5 Respondents Express Loan America Inc and Brian Mitchell maintain records in compliance with the Act and provide the Department with the location of the books, records and other information relating to Respondent Express Loan America Inc's mortgage broker business, and the name, address and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

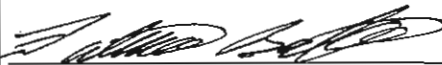
**V. AUTHORITY AND PROCEDURE**

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

Dated this 3<sup>rd</sup> day of May, 2010.

  
DEBORAH BORTNER  
Director  
Division of Consumer Services  
Department of Financial Institutions

Presented by:

  
FATIMA BATIE  
Financial Legal Examiner Supervisor

Approved by:

  
JAMES R. BRUSELBACK  
Enforcement Chief

