

ORDER SUMMARY – Case Number: C-10-350

Name(s): James Charles Schwartz ; Evert Dale Bice

Order Number: C-10-350-13-CO02

Effective Date: 10/25/13

License Number: NMLS ID: Schwartz: 127781 Bice: 127782
Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)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: Unlicensed

Not Apply Until: 10/25/2033

Not Eligible Until: 10/25/2033

Prohibition/Ban Until: 10/25/2033

Investigation Costs	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$15,000	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 10/24/2013
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
	No. of Victims:			

Comments: _____

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

No.: C-10-350-13-CO02

CONSENT ORDER RE:

JAMES C. SCHWARTZ, and
EVERT D. BICE

MORTGAGE NOW, INC.,
NMLS # 117338,
JAMES C. SCHWARTZ,
Principal,
EVERT D. BICE,
Principal,
SCOTT M. MARINELLI,
Principal, and
JAMES L. MARCHESE,
Principal,

Respondents.

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and James C. Schwartz (Respondent Schwartz) and Evert D. Bice (Respondent Bice), and finding that the issues raised in the above-captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to Revised Code of Washington (RCW) 31.04, the Consumer Loan Act (Act), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

AGREEMENT AND ORDER

The Department of Financial Institutions of the State of Washington (Department) and Respondents Schwartz and Bice have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-10-350-12-SC01, entered December 28, 2012 (copy attached hereto), solely as it relates to Respondents Schwartz and Bice. Pursuant to RCW 31.04 and RCW 34.05.060,

1 Respondents Schwartz and Bice, and the Department agree to entry of this Consent Order and further
2 agree that the matters alleged herein may be economically and efficiently settled by the entry of this
3 Consent Order.

4 Based upon the foregoing:

5 A. **Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of the
6 activities discussed herein.

7 B. **Waiver of Hearing.** It is AGREED that Respondents Schwartz and Bice hereby waive any right
8 they have to a hearing and any and all administrative and judicial review of the issues raised in this
9 matter or the resolution reached herein.

10 C. **No Admission of Liability.** It is AGREED that Respondents Schwartz and Bice do not admit
11 to any wrongdoing by the entry of this Consent Order.

12 D. **Prohibition from Industry.** It is AGREED that for 20 years from the date of entry of this
13 Consent Order, Respondents Schwartz and Bice are prohibited from participating in the conduct of
14 the affairs of any consumer loan company or mortgage broker licensed by the Department or subject
15 to licensure or regulation by the Department, in any other capacity, including but not limited to: (1)
16 any financial capacity whether active or passive; or (2) as an officer, director, principal, partner, or
17 member; or (3) any management, control, oversight or maintenance of any trust account(s) in any
18 way related to any residential mortgage transaction; or (4) receiving, disbursing, managing or
19 controlling in any way, consumer trust funds in any way related to any residential mortgage
20 transaction.

21 E. **Application for License.** It is AGREED that, for a period of 20 years from the date of entry
22 of this Consent Order, Respondents Schwartz and Bice shall not apply to the Department for any
23 license under any name. It is further AGREED that, should Respondents Schwartz and Bice apply to

1 the Department for any license under any name at any time later than 20 years from the date of entry
2 of this Consent Order, Respondents Schwartz and Bice shall be required to meet any and all
3 application requirements in effect at that time.

4 **F. Fine.** It is AGREED that Respondents Schwartz and Bice shall pay a fine to the Department
5 in the amount of \$15,000 in one cashier's check made payable to the "Washington State Treasurer"
6 upon entry of this Consent Order.

7 **G. Non-Compliance with Order.** It is AGREED that Respondents Schwartz and Bice
8 understand that failure to abide by the terms and conditions of this Consent Order may result in
9 further legal action by the Director. In the event of such legal action, Respondents Schwartz and Bice
10 may be responsible to reimburse the Director for the cost incurred in pursuing such action, including
11 but not limited to, attorney fees.

12 **H. Voluntarily Entered.** It is AGREED that Respondents Schwartz and Bice have voluntarily
13 entered into this Consent Order, which is effective when signed by the Director's designee.

14 **I. Completely Read, Understood, and Agreed.** It is AGREED that Respondents Schwartz and
15 Bice have read this Consent Order in its entirety and fully understand and agree to all of the same.

16
17 **RESPONDENTS:**

18 **James C. Schwartz**

19 [Redacted signature]

20 James C. Schwartz

10-18-13
Date

21 **Evert D. Bice**

22 [Redacted signature]

23 Evert D. Bice

10/18/13
Date

24 CONSENT ORDER
C-10-350-13-CO02
JAMES C. SCHWARTZ,
EVERT D. BICE

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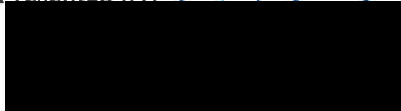
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THIS ORDER ENTERED THIS 25th DAY OF October, 2013.



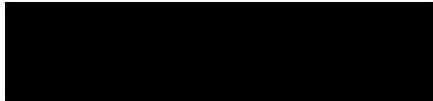
DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:



KENNETH J. SUGIMOTO
Financial Legal Examiner

Approved by:



CHARLES E. CLARK
Enforcement Chief

1 STATE OF WASHINGTON
2 DEPARTMENT OF FINANCIAL INSTITUTIONS
3 DIVISION OF CONSUMER SERVICES

4 IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

5 MORTGAGE NOW, INC.,
6 NMLS # 117338,
7 JAMES C. SCHWARTZ,
Principal,
8 EVERT D. BICE,
Principal,
9 SCOTT M. MARINELLI,
Principal, and
10 JAMES L. MARCHESE,
Principal,

Respondents.

No. C-10-350-12-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER AN
ORDER TO REVOKE LICENSE, PROHIBIT
FROM INDUSTRY, IMPOSE FINE, FILE
ANNUAL REPORTS, COLLECT ANNUAL
ASSESSMENT FEES AND LATE
PENALTIES, COLLECT EXAMINATION
FEE, AND COLLECT INVESTIGATION FEE

11 INTRODUCTION

12 Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial
13 Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04
14 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW
15 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director,
16 by and through his designee, Division of Consumer Services Director, Deborah Bortner, institutes this
17 proceeding and finds as follows:

18 I. FACTUAL ALLEGATIONS

19 1.1 Respondents.

20 A. Mortgage Now, Inc. (Respondent MNI) was licensed by the Department of
21 Financial Institutions of the State of Washington (Department) to conduct the business of a consumer
22 loan company on or about November 28, 2007. Respondent MNI is known to have operated from its
23 licensed main office located at 750 West Resource Drive, Brooklyn Heights, Ohio; a branch location

1 at 18 Dravus Street, Seattle, Washington (licensed on or about April 20, 2009); an unlicensed branch
2 location at 141 West Front Street, Red Bank, New Jersey; an unlicensed branch location at 2300
3 Computer Road, Willow Grove, Pennsylvania; an unlicensed branch location at 4001A Hadley Road,
4 South Plainfield, New Jersey; and an unlicensed branch location at 7001 Peachtree Industrial
5 Boulevard, Norcross, Georgia.

6 **B. James C. Schwartz (Respondent Schwartz)** is known to have been a principal of
7 Respondent MNI from on or about November 28, 2007, to on or about December 30, 2009.

8 **C. Evert D. Bice (Respondent Bice)** is known to have been a principal of Respondent
9 MNI from on or about November 28, 2007, to on or about December 30, 2009.

10 **D. Scott M. Marinelli (Respondent Marinelli)** is known to have been a principal of
11 Respondent MNI from on or about December 30, 2009, to on or about December 22, 2011.

12 **E. James L. Marchese (Respondent Marchese)** is known to have been a principal of
13 Respondent MNI from on or about December 30, 2009, to the date of this Statement of Charges.

14 **1.2 Examination.** From on or about May 17, 2010, to on or about September 21, 2010, the
15 Department examined Respondent MNI's loan portfolio and business practices for the time period
16 from on or about November 28, 2007, to on or about June 30, 2010.

17 **1.3 Operating from Unlicensed Branch Locations.** From on or about June 24, 2008, to on or
18 about February 11, 2009, Respondent MNI originated at least 10 residential mortgage loans from four
19 unlicensed branch locations that were not approved by the Department at the time.

20 **1.4 Engaging in Misleading Residential Mortgage Loan Pricing.** From on or about September
21 26, 2008, to on or about October 30, 2009, Respondent MNI charged fees to borrowers for lowering
22 interest rates in amounts greater than what was required to lower the interest rates in at least two
23 residential mortgage loans.

1 **1.5 Failure to Complete Documents for Borrower Signature.** From on or about August 27,
2 2008, to on or about September 18, 2009, Respondent MNI originated at least nine residential
3 mortgage loans in which one or more documents prepared and provided to a borrower for signature
4 had blanks and were not completed.

5 **1.6 Failure to Disclose Residential Mortgage Loan Fees and Terms.**

6 **A.** In at least five residential mortgage loan applications received between on or about
7 June 24, 2008, and on or about April 10, 2009, Respondent MNI did not provide an itemized
8 estimation and explanation of fees and costs to the borrower within three business days following
9 receipt of the application.

10 **B.** In at least seven residential mortgage loan applications received between on or about
11 June 18, 2008, and on or about April 10, 2009, Respondent MNI did not provide an estimate of the
12 annual percentage rate and a disclosure of whether the residential mortgage loan contained a
13 prepayment penalty within three days following receipt of the application.

14 **C.** In at least four residential mortgage loan applications received between on or about
15 June 24, 2008, and on or about April 10, 2009, Respondent MNI did not provide a servicing
16 disclosure statement to the borrower within three business days following receipt of the application.

17 **D.** In at least two residential mortgage loan applications received between on or about
18 April 10, 2008, and on or about January 13, 2009, Respondent MNI charged higher fees to borrowers
19 on their HUD-1 Settlement Statements than what was disclosed on the borrowers' Good Faith
20 Estimates.

21 **1.7 Failure to Timely File Reports.** A Consolidated Annual Report and an Annual Assessment
22 Report (CAAR) concerning the business and operations of each licensed place of business conducted
23 during the preceding calendar year is due to the Department on or before the first day of March of

1 each year or within 30 days of closure. Respondent MNI's CAAR for the calendar year 2009 was
2 due to the Department on or before March 1, 2010, but the Department did not receive it until April
3 23, 2010. As of the date of this Statement of Charges, the CAARs for calendar years 2010 and 2011
4 have not been filed.

5 **1.8 Failure to Pay Annual Assessment Fees.** Payment of an annual assessment fee is due to the
6 Department on or before the first day of March of each year or within 30 days of closure. As of the
7 date of this Statement of Charges, the annual assessment fee for Respondent MNI has not been paid
8 for the calendar years 2009, 2010, and 2011.

9 **1.9 Failure to Pay Examination Fee.** On or about October 18, 2010, the Department issued an
10 invoice in the amount of \$21,590.55 to Respondent MNI for the examination referenced in paragraph
11 1.2. As of the date of this Statement of Charges, the examination fee has not been paid.

12 **1.10 Failure to Maintain Bond.** On or about December 13, 2010, the Department received notice
13 from the Guaranty Company of North America (GCNA) that Respondent MNI's surety bond would
14 be cancelled effective January 25, 2011. On or about January 14, 2011, the Department notified
15 Respondents MNI, Marinelli, and Marchese that Respondent MNI must file a replacement bond by
16 January 25, 2011; however, no replacement bond was filed.

17 **1.11 Failure to Timely Notify Department of Significant Developments.** From on or about
18 March 26, 2010, to on or about March 26, 2012, the states of California, Georgia, and Ohio, and the
19 Commonwealth of Pennsylvania, initiated regulatory actions against Respondent MNI. Respondents
20 MNI, Marinelli, and Marchese failed to amend Respondent MNI's Nationwide Multistate Licensing
21 System and Registry (NMLS) record to disclose any of the regulatory actions until on or about April
22 27, 2012.

23 **1.12 Failure to Comply with Director's Authority.**

1 company from a fixed physical location without first obtaining and maintaining a branch license for
2 that fixed physical location.

3 **2.2 Prohibited Fees.** Based on the Factual Allegations set forth in Section I above, Respondents
4 MNI, Schwartz, and Bice are in apparent violation of RCW 31.04.027(2), (3), and (7), and WAC
5 208-620-560(5) for collecting fees from borrowers for lowering interest rates in amounts greater than
6 what was required to lower the interest rates.

7 **2.3 Requirement to Complete Documents for Borrower Signature.** Based on the Factual
8 Allegations set forth in Section I above, Respondents MNI, Schwartz, and Bice are in apparent
9 violation of RCW 31.04.027(2) and WAC 208-620-550(7) for providing borrowers with documents
10 that were incomplete and contained blanks.

11 **2.4 Requirement to Disclose Residential Mortgage Loan Fees and Terms.** Based on the
12 Factual Allegations set forth in Section I above, Respondents MNI, Schwartz, and Bice are in
13 apparent violation of RCW 31.04.027(6), RCW 31.04.102(2), (3), and WAC 208-620-505 for failing
14 to provide a borrower, within three business days following the receipt of a loan application, a written
15 disclosure containing an itemized estimation and explanation of all fees and costs that the borrower is
16 required to pay in connection with obtaining a loan, an estimate of the annual percentage rate, a
17 disclosure of whether the loan contains a prepayment penalty, and a servicing disclosure statement.

18 **2.5 Requirement to Timely File Reports.** Based on the Factual Allegations set forth in Section
19 I above, Respondents MNI, Marinelli, and Marchese are in apparent violation of RCW 31.04.027(2),
20 RCW 31.04.155, WAC 208-620-430(1), WAC 208-620-460(1), and WAC 208-620-499(2) for failing
21 to file a CAAR with the Director on or before the first day of March of each year, or within thirty
22 days of closure, giving such relevant information as the Director may reasonably require concerning
23

1 the business and operations of each licensed place of business conducted during the preceding
2 calendar year.

3 **2.6 Requirement to Pay Annual Assessment Fee.** Based on the Factual Allegations set forth in
4 Section I above, Respondents MNI, Marinelli, and Marchese are in apparent violation of RCW
5 31.04.027(2), RCW 31.04.085, WAC 208-620-430(1), WAC 208-620-460(1), and WAC 208-620-
6 499(2) for failing to pay annual assessment fees, as calculated on the CAAR, to the Director on or
7 before the first day of March of each year, or within thirty days of closure.

8 **2.7 Requirement to Pay Examination Fee.** Based on the Factual Allegations set forth in
9 Section I above, Respondents MNI, Marinelli, and Marchese are in apparent violation of RCW
10 31.04.027(2), RCW 31.04.145(3), and WAC 208-620-590 for failing to pay to the Department the
11 cost of examination.

12 **2.8 Requirement to Maintain Surety Bond.** Based on the Factual Allegations set forth in
13 Section I above, Respondents MNI, Marinelli, and Marchese are in apparent violation of RCW
14 31.04.027(2) and RCW 31.04.045(6) for failing to maintain in effect a surety bond or permitted
15 substitute.

16 **2.9 Requirement to Report Significant Developments.** Based on the Factual Allegations set
17 forth in Section I above, Respondents MNI, Marinelli, and Marchese are in apparent violation of
18 RCW 31.04.027(2) and WAC 208-620-490(3) for failing to amend Respondent MNI's NMLS record
19 within twenty days after the occurrence of receipt of notification of license revocation procedures
20 against Respondent MNI's license in any state, or the filing of any material litigation against
21 Respondent MNI.

22 **2.10 Requirement to comply with Director's Authority.** Based on the Factual Allegations set
23 forth in Section I above, Respondents MNI, Marinelli, and Marchese are in apparent violation of

1 RCW 31.04.027(2) and RCW 31.04.145(1) for failing to fully and timely respond to the
2 Department's directives and subpoenas.

3 **2.11 Requirement to Maintain Records.** Based on the Factual Allegations set forth in Section I
4 above, Respondents MNI, Schwartz, and Bice are in apparent violation of RCW 31.04.027(2), RCW
5 31.04.155, and WAC 208-620-520 for failing to preserve the books, accounts, records papers,
6 documents, files, and other information relevant to a loan for at least twenty-five months after making
7 the final entry on any loan.

8 III. AUTHORITY TO IMPOSE SANCTIONS

9 **3.1 Authority to Revoke License.** Pursuant to RCW 31.04.093(3) and WAC 208-620-570, the
10 Director may revoke a license if a licensee: has failed to pay any fee due the state of Washington; has
11 failed to maintain in effect the bond or permitted substitute; or, either knowingly or without the
12 exercise of due care, has violated any provision of the Act or any rule adopted under the Act.

13 **3.2 Authority to Prohibit from the Industry.** Pursuant to RCW 31.04.093(6), the Director may
14 issue orders removing from office or prohibiting from participation in the conduct of the affairs of a
15 consumer loan company, or both, any officer, principal, employee, or loan originator of any licensed
16 mortgage broker or consumer loan company, or any person subject to licensing under the Act for
17 failure to comply with any order or subpoena issued under the Act, or for any violation of RCW
18 31.04.027, RCW 31.04.102, and RCW 31.04.155.

19 **3.3 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of
20 up to one hundred dollars per day upon the licensee, its employee, or other person subject to the Act
21 for any violation of the Act.

1 **3.4 Authority to Issue Order to Take Affirmative Action.** Pursuant to RCW 31.04.093(5), the
2 Director may issue an order directing the licensee, its employee or loan originator, or other person
3 subject to the Act, to take such affirmative action as is necessary to comply with the Act.

4 **3.5 Authority to Collect Annual Assessment Fees.** Pursuant to RCW 31.04.085 and WAC 208-
5 620-430, a licensee shall, for each license held by any person, on or before the first day of each
6 March, pay to the Director an annual assessment as determined by rule by the Director.

7 **3.6 Authority to Collect Report Late Penalties.** Pursuant to RCW 31.04.155 and WAC 208-620-
8 430(2), a licensee that fails to file a report that is required to be filed by the Act, within the time frame
9 required under the Act, is subject to a penalty of fifty dollars per report for each day of delay. The
10 maximum late penalty that will be assessed is five thousand dollars per year.

11 **3.7 Authority to Collect Cost of Examination and Investigation.** Pursuant to RCW 31.04.145(3)
12 and WAC 208-620-590, every licensee examined or investigated by the Director or the Director's
13 designee shall pay to the Director the cost of the investigation, calculated at the rate of \$69.01 per staff
14 hour spent on the investigation. Pursuant to RCW 43.17.240, interest at the rate of one percent per
15 month, or fraction thereof, shall accrue on debts owed to the state, starting on the date the debts become
16 past due.

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

18 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as
19 set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
20 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and
21 RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

22 **4.1** Respondent Mortgage Now, Inc.'s license to conduct business as a consumer loan
23 company be revoked.

- 1 **4.2** Respondents Mortgage Now, Inc., James C. Schwartz, Evert D. Bice, Scott M. Marinelli,
2 and James L. Marchese be prohibited from participation in the conduct of the affairs of
3 any consumer loan company subject to licensure by the Director, in any manner, for a
4 period of five years.
- 5 **4.3** Respondents Mortgage Now, Inc., James C. Schwartz, and Evert D. Bice jointly and
6 severally pay a fine, which as of the date of this Statement of Charges totals \$50,000.
- 7 **4.4** Respondents Mortgage Now, Inc., Scott M. Marinelli, and James L. Marchese jointly and
8 severally pay a fine, which as of the date of this Statement of Charges totals \$50,000.
- 9 **4.5** Respondents Mortgage Now, Inc. and James L. Marchese provide the Department with
10 a completed Consolidated Annual Report and a completed Annual Assessment Report,
11 including all required supporting documentation, for each of the calendar years 2010,
12 2011, and 2012.
- 13 **4.6** Respondents Mortgage Now, Inc., Scott M. Marinelli, and James L. Marchese jointly
14 and severally pay annual assessment fees for the calendar years 2009 and 2010, as
15 calculated in accordance with the instructions for the Annual Assessment Report for each
16 of those years, plus accrued interest.
- 17 **4.7** Respondents Mortgage Now, Inc. and James L. Marchese jointly and severally pay an
18 annual assessment fee for the calendar years 2011 and 2012, as calculated in accordance
19 with the instructions for the Annual Assessment Report for each of those years, plus
20 accrued interest.
- 21 **4.8** Respondents Mortgage Now, Inc., Scott M. Marinelli, and James L. Marchese jointly and
22 severally pay a \$10,000 late penalty for failing to timely file a Consolidated Annual
23 Report and a completed Annual Assessment Report for the calendar years 2009 and
24 2010.
- 4.9** Respondents Mortgage Now, Inc. and James L. Marchese jointly and severally pay a
 \$5,000 late penalty for failing to timely file a Consolidated Annual Report and a
 completed Annual Assessment Report for the calendar year 2011.
- 4.10** Respondents Mortgage Now, Inc., Scott M. Marinelli, and James L. Marchese jointly and
 severally pay the cost of the Department's examination. The cost of the examination
 totals \$21,590.55 (\$4,961.55 for travel expenses and \$16,629 for examination costs), plus
 accrued interest.
- 4.11** Respondents Mortgage Now, Inc., James C. Schwartz, Evert D. Bice, Scott M. Marinelli,
 and James L. Marchese jointly and severally pay the cost of the Department's
 investigation. As of the date of this Statement of Charges, the cost of the investigation
 totals \$2,200.

