

ORDER SUMMARY – Case Number: C-10-408-12-FO01

Name(s): NOD Consultants
Nicolas R Godbout

Order Number: C-10-408-12-FO01

Effective Date: March 19, 2012

License Number: unlicensed

Not Apply Until: March 19, 2017

Not Eligible Until: March 19, 2017

Prohibition/Ban Until: March 19, 2017

Investigation Costs	\$480.80	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date: *See Below
Fine	\$20,000	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date: **See Below
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$5,900	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date: ***See Below
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: Grant A. Gerhart was removed from this Final Order under C-10-408-14-CO01

* Investigation Costs were paid under C-10-408-14-CO01

**\$3,619.20 of the fine was paid under C-10-408-14-CO01

*** Restitution was paid under C-10-408-14-CO01

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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:

No.: C-10-408-12-FO01

NOD CONSULTANTS, LLC,
NICOLAS R. GODBOUT, Member, and
GRANT A. GERHART, Member,

FINAL ORDER

Respondents.

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I. DIRECTOR'S CONSIDERATION

A. Default. This matter has come before the Director of the Department of Financial Institutions of the State of Washington (Director), through his designee, Consumer Services Division Director Deborah Bortner (Director's designee), pursuant to RCW 34.05.440(1). On December 14, 2011, the Director, through the Director's designee, issued a Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry, Order Restitution, Impose Fine, and Collect Investigation Fee (Statement of Charges) against NOD Consultants, LLC, Nicolas R. Godbout, and Grant A. Gerhart (Respondents). A copy of the Statement of Charges is attached and incorporated into this order by this reference. The Statement of Charges was accompanied by a cover letter dated December 15, 2011, a Notice of Opportunity to Defend and Opportunity for Hearing, and a blank Application for Adjudicative Hearing for each Respondent (collectively, accompanying documents).

On December 15, 2011, the Department served Respondents with the Statement of Charges and accompanying documents by First-Class mail and Federal Express overnight delivery. The documents sent by Federal Express overnight delivery were not successfully delivered. The documents sent by First-Class mail, however, were not returned to the Department by the United States Postal Service as undeliverable. On February 6, 2012, the Department attempted to have

1 Respondent Godbout personally served by ABC Legal Services (ABC) at the same address where the
2 Department served Respondent Godbout by First-Class mail. The ABC process server thereafter
3 submitted a Declaration under Penalty of Perjury that the resident had informed the process server
4 that Respondent Godbout had moved but still received his mail at that address. On February 7, 2012,
5 the Department had Respondents NOD and Gerhart personally served by ABC at the same address
6 where the Department had served Respondent Gerhart by First-Class mail.

7 Respondents did not request an adjudicative hearing within 20 calendar days after the
8 Department served the Notice of Opportunity to Defend and Opportunity for Hearing, as provided for
9 in WAC 208-08-050(2).¹

10 B. Record Presented. The record presented to the Director's designee for her review and
11 for entry of a final decision included the Statement of Charges, cover letter dated December 15, 2011,
12 Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for
13 Adjudicative Hearing for each Respondent, with documentation for service.

14 C. Factual Findings and Grounds for Order. Pursuant to RCW 34.05.440(1), the
15 Director's designee hereby adopts the Statement of Charges, which is attached hereto.

16 II. FINAL ORDER

17 Based upon the foregoing, and the Director's designee having considered the record and being
18 otherwise fully advised, NOW, THEREFORE:

19 A. IT IS HEREBY ORDERED, That:

- 20 1. Respondents NOD Consulting, LLC, Nicolas R. Godbout, and Grant A. Gerhart
21 are prohibited from participation in the conduct of the affairs of any mortgage
22 broker subject to licensure by the Director, in any manner, for a period of five
23 years.

24 ¹ On or about March 9, 2012, the Department received an untimely Application for Administrative Hearing from
Respondent Gerhart which had been postmarked March 6, 2012.

- 1 2. Respondents NOD Consulting, LLC, Nicolas R. Godbout, and Grant A. Gerhart
2 shall jointly and severally pay a fine in the amount of \$20,000.
- 3 3. Respondents NOD Consulting, LLC, Nicolas R. Godbout, and Grant A. Gerhart
4 jointly and severally pay restitution in the amount of \$2,950 to borrowers B.C. and
5 S.C. and \$2,950 to borrower R.J.
- 6 4. Respondents NOD Consulting, LLC, Nicolas R. Godbout, and Grant A. Gerhart
7 jointly and severally pay an investigation fee in the amount of \$480.80.
- 8 5. Respondents NOD Consulting, LLC, Nicolas R. Godbout, and Grant A. Gerhart
9 shall maintain records in compliance with the Act and provide the Department
10 with the location of the books, records and other information relating to
11 Respondents' mortgage broker business, and the name, address, and telephone
12 number of the individual responsible for maintenance of such records in
13 compliance with the Act.

14 B. Reconsideration. Pursuant to RCW 34.05.470, Respondents have the right to file a
15 Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition
16 must be filed in the Office of the Director of the Department of Financial Institutions by courier at
17 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,
18 Washington 98504-1200, within ten (10) days of service of the Final Order upon Respondent. The
19 Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for
20 Reconsideration a prerequisite for seeking judicial review in this matter.

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

24 C. Stay of Order. The Director's designee 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.

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

4 E. Non-compliance with Order. If you do not comply with the terms of this order, the
5 Department may seek its enforcement by the Office of the Attorney General to include the collection
6 of the fine, fee, and restitution imposed herein. The Department also may assign the amounts owed
7 to a collection agency for collection.

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

11 DATED this 19th day of March, 2012



13 STATE OF WASHINGTON
14 DEPARTMENT OF FINANCIAL INSTITUTIONS

15 [Redacted Signature]
16 DEBORAH BORTNER
17 Director
18 Division of Consumer Services

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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:

NOD CONSULTANTS, LLC,
NICOLAS R. GODBOUT, Member, and
GRANT A. GERHART, Member,

Respondents.

No. C-10-408-11-SC01

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

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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). After having conducted an investigation
pursuant to RCW 19.146.235, and based upon the facts available as of 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:

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I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. **NOD Consultants, LLC (NOD)** has never been 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 this Statement of Charges, Respondent NOD was registered with the
California Secretary of State as an active Limited Liability Company.

B. **Nicolas R. Godbout (Godbout)** was a Member of Respondent NOD at all times
relevant to this Statement of Charges. Respondent Godbout has never been licensed by the
Department for any purpose.

1 C. **Grant A. Gerhart (Gerhart)** was a Member of Respondent NOD at all times
2 relevant to this Statement of Charges. Respondent Gerhart has never been licensed by the
3 Department for any purpose.

4 **1.2 Unlicensed Activity.** On or about October 30, 2009, Washington consumer A.S. received an
5 advertisement in the mail advertising that the sender of the advertisement could assist the consumer
6 “modify your existing home loan and reduce your monthly mortgage payments, receive interest rate
7 reductions, and/or freeze your existing interest rate.” The advertisement did not bear the name of any
8 company or individual, but invited the consumer to call a toll-free number. On or about April 14,
9 2010, a representative from the Department called the toll-free number and reached a voice
10 messaging system identifying the user of the number as “NOD Consultants.”

11 Between at least March 1, 2010, and April 30, 2010, Respondents assisted at least three
12 Washington consumers in attempting to modify the terms of two residential mortgage loans.
13 Respondents collected an advance fee of \$2,950 from B.C. and S.C. and an advance fee of \$2,950
14 from R.J. No loan modifications were provided.

15 **1.3 Unlicensed Loan Originator Activity.** Between at least March 1, 2010, and April 30, 2010,
16 Respondents permitted at least three unlicensed loan originators to assist borrowers in obtaining
17 residential mortgage loans in at least two transactions. Respondent Godbout and loan originator
18 Richlyn Graf assisted borrowers B.C. and S.C. and Respondent Gerhart assisted borrower R.J.

19 **1.4 On-Going Investigation.** The Department’s investigation into the alleged violations of the
20 Act by Respondents continues to date.

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

2 **2.1 Definition of Mortgage Broker.** Pursuant to RCW 19.146.010(14) and WAC 208-660-006,
3 “Mortgage broker” includes any person who, for compensation or gain, or in the expectation of
4 compensation or gain (a) assists a person by counseling on loan terms (rates, fees, other costs) or (b)
5 holds himself or herself out as being able to perform those services.

6 **2.2 Definition of Loan Originator.** Pursuant to RCW 19.146.010(11) and WAC 208-660-006,
7 “Loan originator” means a natural person who for direct or indirect compensation or gain, or in the
8 expectation of direct or indirect compensation or gain performs residential mortgage loan
9 modification services or holds themselves out to the public as able to perform any of these activities.

10 **2.3 Definition of Residential Mortgage Loan Modification.** Pursuant to RCW 19.146.010(20)
11 and WAC 208-660-006, “Residential mortgage loan modification” means a change in one or more of
12 a residential mortgage loan’s terms or conditions. Changes to a residential mortgage loan’s terms or
13 conditions include but are not limited to forbearances; repayment plans; changes in interest rates, loan
14 terms, or loan types; capitalization of arrearages; or principal reductions.

15 **2.4 Definition of Residential Mortgage Loan Modification Services.** Pursuant to RCW
16 19.146.010(21) and WAC 208-660-006, “Residential mortgage loan modification services” includes
17 negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to
18 perform a residential mortgage loan modification. “Residential mortgage loan modification services”
19 also includes the collection of data for submission to any entity performing mortgage loan
20 modification services.

21 **2.5 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents
22 are in apparent violation of RCW 19.146.0201(1), (2), and (3) for directly or indirectly employing a
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1 scheme, device or artifice to defraud or mislead any person, engaging in an unfair or deceptive
2 practice toward any person, and obtaining property by fraud or misrepresentation.

3 **2.6 Requirement to Obtain and Maintain Mortgage Broker License.** Based on the Factual
4 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.200(1)
5 and WAC 208-660-155 for engaging in the business of a mortgage broker without first obtaining and
6 maintaining a license under the Act.

7 **2.7 Requirement to Obtain and Maintain Loan Originator License.** Based on the Factual
8 Allegations set forth in Section I above, Respondents Godbout and Gerhart are in apparent violation
9 of RCW 19.146.200(1) and WAC 208-660-155 for engaging in the business of a loan originator
10 without first obtaining and maintaining a license under the Act.

11 III. AUTHORITY TO IMPOSE SANCTIONS

12 **3.1 Authority to Prohibit from Industry.** Pursuant to RCW 19.146.220(5), the Director may
13 issue orders prohibiting from participation in the conduct of the affairs of a licensed mortgage broker,
14 any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9)
15 or RCW 19.146.200.

16 **3.2 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2), the Director may order
17 restitution against any person subject to the Act for any violation of the Act.

18 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2) and (3), the Director may
19 impose fines against any person subject to the Act for any violations of RCW 19.146.0201(1) through
20 (9) or RCW 19.146.200.

21 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-
22 520(9) & (11), and WAC 208-660-550(4)(a), the Department may collect the costs of investigation.
23 The Department will charge \$48 per hour for each examiner's time devoted to an investigation.

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

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

6 **4.1** Respondents NOD Consulting, LLC, Nicolas R. Godbout, and Grant A. Gerhart be prohibited
7 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 years.

8 **4.2** Respondents NOD Consulting, LLC, Nicolas R. Godbout, and Grant A. Gerhart jointly and
severally pay a fine which as of the date of these charges totals \$20,000.

9 **4.3** Respondents NOD Consulting, LLC, Nicolas R. Godbout, and Grant A. Gerhart jointly and
10 severally pay restitution in the amount of \$2,950 to borrowers B.C. and S.C. and \$2,950 to
borrower R.J.

11 **4.4** Respondents NOD Consulting, LLC, Nicolas R. Godbout, and Grant A. Gerhart jointly and
12 severally pay an investigation fee which as of the date of these charges totals \$480.80.

13 **4.5** Respondents NOD Consulting, LLC, Nicolas R. Godbout, and Grant A. Gerhart maintain
14 records in compliance with the Act and provide the Department with the location of the
books, records and other information relating to Respondents' mortgage broker business, and
15 the name, address, and telephone number of the individual responsible for maintenance of
such records in compliance with the Act.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges is entered pursuant to the provisions of RCW 19.146.220, RCW
3 19.146.221, RCW 19.146.223, and RCW 19.146.230, and is subject to the provisions of chapter
4 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a
5 hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR
6 HEARING accompanying this Statement of Charges.

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8 Dated this 14th day of December, 2011.



[Redacted signature]

DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

13 Presented by:

14 [Redacted signature]

15 STEVEN C. SHERMAN
16 Financial Legal Examiner

17 Approved by:

18 [Redacted signature]

19 JAMES R. BRUSSELBACK
20 Enforcement Chief