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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:

PENDULUM FINANCIAL GROUP d/b/a BLUE  
FOX FINANCIAL,

Respondent.

No.: C-10-430-11-FO01

FINAL ORDER

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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 June 8, 2011, the Director, through the Director's designee, issued a Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Prohibit From Industry, Impose Fine, Order Restitution, Collect Investigation Fee, and Maintain Records (Statement of Charges) against Pendulum Financial Group d/b/a Blue Fox Financial (Respondent). 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 June 9, 2011, a Notice of Opportunity to Defend and Opportunity for Hearing, and a blank Application for Adjudicative Hearing for Respondent (collectively, accompanying documents).

On June 9, 2011, the Department served Respondent with the Statement of Charges and accompanying documents, sent by Federal Express overnight delivery and United States Postal Service First-Class mail (First-Class mail). On June 10, 2011, the documents sent via Federal Express overnight delivery were delivered. The documents sent via First-Class mail were not returned to the Department by the United States Postal Service.

1 On or about June 20, 2011, the Department received an Application for Adjudicative Hearing  
2 for Respondent. Respondent specifically answered that Respondent "DOES NOT REQUEST" a  
3 formal hearing in the matter.

4 Respondent did not request an adjudicative hearing within twenty calendar days after the  
5 Department served the Notice of Opportunity to Defend and Opportunity for Hearing, as provided for  
6 in WAC 208-08-050(2).

7 B. Record Presented. The record presented to the Director's designee for her review and  
8 for entry of a final decision included the following:

- 9 1. Statement of Charges, cover letter, Notice of Opportunity to Defend and  
10 Opportunity for Hearing, and blank Application for Adjudicative Hearing for  
Respondent, with documentation for service.
- 11 2. Completed Application for Adjudicative Hearing indicating no hearing was  
12 requested date stamped on June 20, 2011.

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

## 15 II. FINAL ORDER

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

18 A. IT IS HEREBY ORDERED, That:

- 19 1. Respondent Pendulum Financial Group d/b/a Blue Fox Financial cease and desist  
engaging in the business of a mortgage broker or loan originator in regards to  
20 residents of the State of Washington or property located in the State of  
Washington;
- 21 2. Respondent Pendulum Financial Group d/b/a Blue Fox Financial is prohibited  
from participation in the conduct of the affairs of any mortgage broker subject to  
22 licensure by the Director, in any manner, for a period of five (5) years;
- 23 3. Respondent Pendulum Financial Group d/b/a Blue Fox Financial pay a fine of  
\$4,500;

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- 2 4. Respondent Pendulum Financial Group d/b/a Blue Fox Financial pay restitution to
- 3 at least the consumer identified in the attached restitution schedule (herein
- 4 incorporated by reference);
- 5 5. Respondent Pendulum Financial Group d/b/a Blue Fox Financial pay an
- 6 investigation fee of \$912;
- 7 6. Respondent Pendulum Financial Group d/b/a Blue Fox Financial maintain records
- 8 in compliance with the Act and provide the Department with the location of the
- 9 books, records and other information relating to Respondent Pendulum Financial
- 10 Group d/b/a Blue Fox Financial's mortgage broker business, and the name, address
- 11 and telephone number of the individual responsible for maintenance of such
- 12 records in compliance with the Act.

13 B. Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to file a

14 Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition

15 must be filed in the Office of the Director of the Department of Financial Institutions by courier at

16 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,

17 Washington 98504-1200, within ten (10) days of service of the Final Order upon Respondent. The

18 Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for

19 Reconsideration a prerequisite for seeking judicial review in this matter.

20 A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the

21 date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a

22 written notice specifying the date by which it will act on a petition.

23 C. Stay of Order. The Director's designee has determined not to consider a Petition to

24 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.

D. Judicial Review. Respondent has the right to petition the superior court for judicial

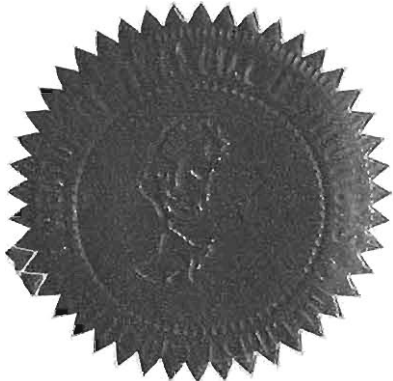
review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for

filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

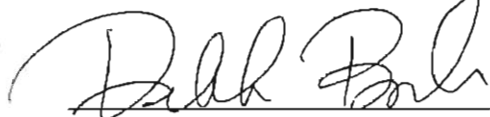
1 E. Non-compliance with Order. If you do not comply with the terms of this order, the  
2 Department may seek its enforcement by the Office of the Attorney General to include the collection  
3 of the fines, restitution, and fees imposed herein. The Department also may assign the amounts owed  
4 to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

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

8 DATED this 17<sup>th</sup> day of October, 2011



10 STATE OF WASHINGTON  
11 DEPARTMENT OF FINANCIAL INSTITUTIONS

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13 DEBORAH BORTNER  
14 Director  
15 Division of Consumer Services

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**STATE OF WASHINGTON  
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IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Mortgage Broker Practices Act of Washington by:  
  
PENDULUM FINANCIAL GROUP d/b/a BLUE  
FOX FINANCIAL,

No. C-10-430-11-SC01

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

Respondent.

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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:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondent.** Pendulum Financial Group d/b/a Blue Fox Financial (Respondent) is located at  
8320 West Sunrise Boulevard, Plantation, Florida. Respondent has never been licensed by the  
Department of Financial Institutions of the State of Washington (Department) to conduct business as  
a mortgage broker or loan originator in the State of Washington.

**1.2 Unlicensed Activity.** Between at least March 2009 and October 2009, Respondent held itself  
out as able to assist at least one consumer in applying to obtain a loan modification on at least one  
property located in the State of Washington. Respondent contacted the consumer by telephone and  
told the consumer they could help her if she was having trouble making payments on her home.

1 Respondent received fees totaling at least \$1,500. To date Respondent has never been licensed by the  
2 Department to engage in the business of a mortgage broker or loan originator.

3 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the  
4 Act by 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-  
7 010(29), "Mortgage Broker" means any person who, for compensation or gain, or in the expectation  
8 of compensation or gain (a) makes a residential mortgage loan or assists a person in obtaining or  
9 applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to  
10 make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential  
11 mortgage loan.

12 **2.2 Definition of Loan Originator.** Pursuant to RCW 19.146.010(10), "Loan Originator" means  
13 a natural person who for direct or indirect compensation or gain, or in the expectation of direct or  
14 indirect compensation or gain (i) takes a residential mortgage loan application for a mortgage broker,  
15 or (ii) offers or negotiates terms of a mortgage loan. "Loan originator" also includes a person who  
16 holds themselves out to the public as able to perform any of these activities. "Loan originator" does  
17 not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the  
18 purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and  
19 distribution of information common for the processing of a loan in the mortgage industry and  
20 communication with a borrower to obtain information necessary for the processing of a loan. A  
21 person who holds himself or herself out to the public as able to obtain a loan is not performing  
22 administrative or clerical tasks.

1 **2.3 Requirement to Obtain and Maintain Mortgage Broker License.** Based on Factual  
2 Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.200 for  
3 engaging in the business of a mortgage broker without first obtaining and maintaining a license under  
4 the Act.

5 **2.4 Requirement to Obtain and Maintain Loan Originator License.** Based on the Factual  
6 Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.200(1)  
7 and WAC 208-660-155(1) for engaging in the business of a loan originator without first obtaining  
8 and maintaining a loan originator license under the Act.

9 **2.5 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent  
10 is in apparent violation of RCW 19.146.0201(1), (2), and (3) for directly or indirectly employing a  
11 scheme, device or artifice to defraud or mislead borrowers or lenders or any person, engaging in an  
12 unfair or deceptive practice toward any person, or obtaining property by fraud or misrepresentation.

13 **2.6 Requirement to Maintain Accurate and Current Books and Records.** Pursuant to RCW  
14 19.146.060, Respondent is required to keep all books and records in a location that is on file with and  
15 readily available to the Department until at least twenty-five months have elapsed following the  
16 effective period to which the books and records relate.

### 17 III. AUTHORITY TO IMPOSE SANCTIONS

18 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 19.146.220(4), the  
19 Director may issue orders directing a licensee, its employee or loan originator, or other person subject  
20 to the Act to cease and desist from conducting business in a manner that is injurious to the public or  
21 violates any provision of the Act.

22 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 19.146.220(5), the Director may  
23 issue orders removing from office or prohibiting from participation in the conduct of the affairs of

1 licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed  
2 mortgage broker or any person subject to licensing under the Act for any violation of RCW  
3 19.146.0201(1) through (9) or (12), RCW 19.146.200, or failure to comply with a directive or order  
4 of the Director.

5 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(d), (e), and (3)(a) and (b), the  
6 Director may impose fines on a licensee, employee or loan originator of the licensee, or other person  
7 subject to the Act for any violations of RCW 19.146.020(1) through (9) or (12), RCW 19.146.200, or  
8 failure to comply with a directive or order of the Director. Authority to Order Restitution. Pursuant  
9 to RCW 19.146.220(2)(d) and (e), the Director may issue orders directing a licensee, its employee or  
10 loan originator, or other person subject to the Act to pay restitution to an injured borrower.

11 **3.4 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2)(d) and (e), the Director  
12 may issue orders directing a licensee, its employee or loan originator, or

13 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-  
14 550(4), and WAC 208-660-520(9), the Department will charge forty-eight dollars per hour for an  
15 examiner's time devoted to an investigation of the books and records of a licensee or other person  
16 subject to the Act.

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

18 Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC,  
19 as 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 19.146.220, RCW 19.146.221, and  
21 RCW 19.146.223. Therefore, it is the Director's intention to ORDER that:

22 4.1 Respondent Pendulum Financial Group d/b/a Blue Fox Financial cease and desist engaging in  
23 the business of a mortgage broker or loan originator in regards to residents of the State of Washington  
or property located in the State of Washington;



1 4.2 Respondent Pendulum Financial Group d/b/a Blue Fox Financial be prohibited from  
2 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 4.3 Respondent Pendulum Financial Group d/b/a Blue Fox Financials pay a fine, which as of the  
4 date of this Statement of Charges totals \$4,500;

5 4.4 Respondent Pendulum Financial Group d/b/a Blue Fox Financial pay restitution to at least the  
6 consumer identified in paragraph 1.2 above;

7 4.5 Respondent Pendulum Financial Group d/b/a Blue Fox Financial pay an investigation fee,  
8 which as of the date of this Statement of Charges totals \$912 calculated at \$48 per hour for nineteen  
9 (29) staff hours devoted to the investigation; and

10 4.6 Respondent Pendulum Financial Group d/b/a Blue Fox Financial maintain records in  
11 compliance with the Act and provide the Department with the location of the books, records and  
12 other information relating to Respondent Pendulum Financial Group d/b/a Blue Fox Financial's  
13 mortgage broker business, and the name, address and telephone number of the individual responsible  
14 for maintenance of such records in compliance with the Act.

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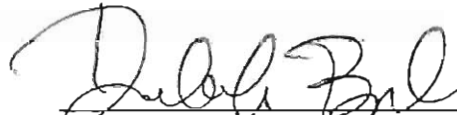
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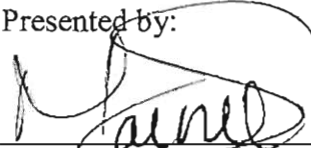
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**V. AUTHORITY AND PROCEDURE**


This 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). Respondent may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

Dated this 8<sup>th</sup> day of June, 2011

  
\_\_\_\_\_  
DEBORAH BORTNER  
Director  
Division of Consumer Services  
Department of Financial Institutions

Presented by:  
  
\_\_\_\_\_  
MARNIE SHEERAN  
Financial Legal Examiner



Approved by:  
  
\_\_\_\_\_  
JAMES R. BRUSSELBACK  
Enforcement Chief