

ORDER SUMMARY – Case Number: C-11-009

Name(s): David W Clark

Order Number: C-11-009-13-FO02

Effective Date: February 12, 2013

License Number: NMLS 493829

Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)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: _____

Not Apply Until: _____

Not Eligible Until: _____

Prohibition/Ban Until: February 12, 2018

Investigation Costs	\$902.40	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Fine	\$65,300	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$72,942	Due	Paid <input type="checkbox"/> Y <input checked="" 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

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

MAXIM MORTGAGE SOLUTIONS,
DAVID W. CLARK, Owner, and
ROGER HULSEBUS, Owner,

Respondents.

No.: C-11-009-13-FO02

FINAL ORDER RE:
DAVID W. CLARK

I. ACTING DIRECTOR'S CONSIDERATION

Procedural History. This matter has come before the Acting Director of the Department of Financial Institutions of the State of Washington ("Acting Director"¹), pursuant to RCW 34.05.440(2). On February 3, 2012, the Acting Director, through his designee, Consumer Services Division Director Deborah Bortner, issued a Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Prohibit from Industry, Order Restitution, Impose Fine, and Collect Investigation Fee ("Statement of Charges") against Maxim Mortgage Solutions ("Respondent Maxim Mortgage") and David Clark ("Respondent Clark"). On February 6, 2012, the Department served Respondents Maxim Mortgage and Clark with the Statement of Charges and accompanying documents, sent by First-Class mail and Federal Express overnight delivery. The Statement of Charges was accompanied by a cover letter dated February 6, 2012, Notices of Opportunity to

¹ During the period prior to January 16, 2013, when Governor Jay Inslee became the new governor of the state of Washington, the Acting Director was the permanently appointed "Director" of the Department under the former Governor Christine Gregoire. At present, Scott Jarvis is the Acting Director of the Department. For shorthand purposes, Scott Jarvis is referred to throughout as the "Acting Director." As Acting Director, Scott Jarvis has all the powers of the Director of the Department under chapter 43.320 RCW, including the power to issue a Final Order under chapter 34.05 RCW.

1 Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for
2 Respondents Maxim Mortgage and Clark.

3 On February 23, 2012, Respondent Clark filed an Application for Adjudicative Hearing. On
4 May 21, 2012, the Department made a request to the Office of Administrative Hearings (“OAH”) to
5 assign an Administrative Law Judge (“ALJ”) to schedule and conduct a hearing on the Statement of
6 Charges. On June 14, 2012, OAH issued a Notice of Conference assigning ALJ Steven C. Smith
7 (“ALJ Smith”) to preside over prehearing and hearing proceedings and issue an Initial Decision. On
8 July 5, 2012, Respondent Roger Hulsebus (“Respondent Hulsebus”) filed an application for
9 Adjudicative Hearing.

10 On June 7, 2012, the Acting Director, through his designee, Consumer Services Division
11 Director Deborah Bortner, issued an Amended Statement of Charges and Notice of Intention to Enter
12 an Order to Cease and Desist, Prohibit from Industry, Order Restitution, Impose Fine, and Collect
13 Investigation Fee (“Amended Statement of Charges”) against Respondent Maxim Mortgage,
14 Respondent Clark, and Respondent Hulsebus. The Amended Statement of Charges was accompanied
15 by a cover letter dated June 13, 2012, Notices of Opportunity to Defend and Opportunity for Hearing,
16 and blank Applications for Adjudicative Hearing for Respondents Maxim Mortgage, Clark, and
17 Hulsebus (collectively, “accompanying documents”).² On June 13, 2012, the Department served
18 Respondents Maxim Mortgage, Clark, and Hulsebus with the Amended Statement of Charges and
19 accompanying documents, sent by First-Class mail and Federal Express overnight delivery. Copies
20 of the Statement of Charges and Amended Statement of Charges are attached and incorporated into
21 this order by this reference.

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24 ² The cover letter to Respondent Clark indicated that a second request for hearing on the Amended Statement of Charges would be combined with his existing Application. A second request for hearing was not received, however.

1 On July 11, 2012, the Department made a request to OAH to assign an ALJ to schedule and
2 conduct a hearing on the Amended Statement of Charges. Respondent Clark's original Application
3 for Adjudicative Hearing on the Statement of Charges was included in the proceedings related to the
4 Amended Statement of Charges. On July 25, 2012, OAH issued an Amended Notice of Conference
5 assigning ALJ Smith to preside over prehearing and hearing proceedings and issue an Initial
6 Decision. The Amended Notice of Conference scheduled a prehearing conference on Tuesday,
7 September 4, 2012, at 10:00 a.m. That Notice stated: **"You must participate in the conference. If
8 you do not, a default may be entered. This means you lose the opportunity to further challenge
9 the agency action. RCW 34.05.440."**

10 On September 4, 2012, the prehearing conference was convened by ALJ Smith at 10:00 a.m.
11 Respondent Clark failed to appear and the Department moved for an order of default dismissing the
12 administrative appeal. On November 8, 2012, ALJ Smith issued an Initial Order of Default for
13 Respondent Clark ("Order of Default") dismissing Respondent Clark's administrative appeal. On
14 November 8, 2012, ALJ Smith sent the Order of Default to Respondents and their counsel via First-
15 Class mail.

16 Pursuant to RCW 34.05.440(3), Respondent Clark had seven (7) days from the date of service
17 of the Initial Order of Default to file a written motion with OAH requesting that the Initial Order of
18 Default be vacated, and stating the grounds relied upon. Respondent Clark did not make a request to
19 vacate during the statutory period.

20 Pursuant to RCW 34.05.464 and WAC 10-08-211, Respondent Clark had twenty (20) days
21 from the date of service of the Initial Order of Default to file a Petition for Review of the Initial Order
22 of Default. Respondent Clark did not file a Petition for Review during the statutory period.

23 A. Record Presented. The record presented to the Acting Director for his review and for
24 entry of a final decision included the following:

FINAL ORDER RE: DAVID W. CLARK 3
C-11-009-13-FO02
MAXIM MORTGAGE SOLUTIONS,
DAVID CLARK, and ROGER HULSEBUS

DEPARTMENT OF FINANCIAL INSTITUTIONS
150 Israel Road SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8700

- 1 1. Statement of Charges, cover letter dated February 6, 2012, and Notices of
2 Opportunity to Defend and Opportunity for Hearing, with documentation of
3 service.
- 4 2. Amended Statement of Charges, cover letter dated June 13, 2012, and Notices of
5 Opportunity to Defend and Opportunity for Hearing, with documentation of
6 service.
- 7 3. Application for Adjudicative Hearing for Respondent Clark as to the Statement of
8 Charges.
- 9 4. Requests to OAH for Assignment of Administrative Law Judge.
- 10 5. Notice of Conference dated June 14, 2012, with documentation of service.
- 11 6. Amended Notice of Conference dated July 25, 2012, with documentation of
12 service.
- 13 7. Prehearing Conference Order and Notice of Hearing dated September 12, 2012,
14 with documentation of service.
- 15 8. Initial Order of Default for Respondent Clark dated November 8, 2012, with
16 documentation of service.

17 B. Factual Findings and Grounds for Order. Pursuant to RCW 34.05.440(2), the Acting
18 Director hereby adopts the Amended Statement of Charges, which is attached hereto.

19 II. FINAL ORDER

20 Based upon the foregoing, and the Acting Director having considered the record and being
21 otherwise fully advised, NOW, THEREFORE:

22 A. IT IS HEREBY ORDERED, That:

- 23 1. Respondent Clark cease and desist providing or offering to provide residential loan
24 modification services.
2. Respondent Clark is prohibited, in any capacity, from participation in the conduct
of the affairs of any mortgage broker subject to licensure by the Acting Director,
for a period of five (5) years.

- 1 3. Respondent Clark shall pay to the Washington State Department of Financial
2 Institutions, within thirty (30) days of receipt of this order, a fine of Sixty Five
3 Thousand Three Hundred Dollars (\$65,300.00).
- 4 4. Respondent Clark shall pay to the Washington State Department of Financial
5 Institutions, within thirty (30) days of receipt of this order, Seventy Two Thousand
6 Nine Hundred Forty Two Dollars (\$72,942.00) in restitution to the forty-four (44)
7 borrowers identified in the Restitution Appendix of the Amended Statement of
8 Charges.
- 9 5. Respondent Clark shall pay to the Washington State Department of Financial
10 Institutions, within 30 days of receipt of this order, an investigation fee of Nine
11 Hundred Two Dollars and Forty Cents (\$902.40).*
- 12 6. Respondent Clark will maintain records in compliance with chapter 19.146 RCW,
13 the Mortgage Broker Practices Act (Act) and provide the Acting Director with the
14 location of the books, records and other information relating to Respondent Maxim
15 Mortgage's mortgage broker business, and the name, address and telephone
16 number of the individual responsible for maintenance of such records in
17 compliance with the Act.

18 B. Reconsideration. Pursuant to RCW 34.05.470, Respondent Clark has the right to file a
19 Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition
20 must be filed in the Office of the Director of the Department of Financial Institutions by courier at
21 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,
22 Washington 98504-1200, within ten (10) days of service of the Final Order upon Respondent Clark.
23 The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for
24 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 The combined fine, restitution and investigation fee may be paid together in the form of a cashier's check in the amount of \$139,144.40 made payable to the "Washington State Treasurer."

1 C. Stay of Order. The Acting Director has determined not to consider a Petition to Stay
2 the effectiveness of this order. Any such requests should be made in connection with a Petition for
3 Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

4 D. Judicial Review. Respondent Clark has the right to petition the superior court for
5 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the
6 requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

7 E. Non-compliance with Order. If Respondent Clark does not comply with the terms of
8 this order, **including payment of any amounts owed within 30 days of receipt of this order**, the
9 Department may seek its enforcement by the Office of the Attorney General to include the collection
10 of the fines, fees, and restitution imposed herein. The Department also may assign the amounts owed
11 to the Department to a collection agency for collection.

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

15 DATED this 12th day of February 2013.



18 STATE OF WASHINGTON
19 DEPARTMENT OF FINANCIAL INSTITUTIONS

20 [Redacted Signature] _____
21 SCOTT JARVIS
22 Acting Director

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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:

MAXIM MORTGAGE SOLUTIONS and
DAVID CLARK, Owner,

Respondents.

No. C-11-009-12-SC01

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

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)¹. After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of 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.

A. **Maxim Mortgage Solutions (Respondent Maxim Mortgage)** has never been licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker. Respondent Maxim Mortgage is known to do business from 214 E Riverside Blvd., Loves Park, Illinois.

B. **David W. Clark (Respondent Clark)** is the owner of Respondent Maxim Mortgage. Respondent Clark has never been licensed by the Department as a mortgage broker or loan originator.

¹ RCW 19.146 (2008)

1 **1.2 Unlicensed Activity.** Between at least August 25, 2009, and February 5, 2010, Respondents
2 conducted loan modification services for at least 49 Washington consumers.

3 On or about October 27, 2009, Washington consumer [REDACTED] entered into an agreement with
4 Respondents for assistance with applying for a residential loan modification. Respondents were paid
5 an advance fee of at least \$975 for this service. When [REDACTED] grew dissatisfied, he requested that
6 Respondents refund his money. Respondents did not do so. [REDACTED] subsequently contacted the
7 Department regarding Respondents. The Department contacted Respondents, requesting information.

8 On or about September 29, 2010, Respondent Clark returned a Claim of Non-Applicability to
9 the Department. Respondent Clark's response as to why Respondents were not subject to licensure
10 was as follows: "Never have done any business in State of WA and have no intentions to do so." The
11 document was signed "David W. Clark, Owner." Documents provided to the Department on or about
12 January 7, 2011, by a representative of Respondent Maxim Mortgage showed that at least 49
13 Washington consumers had paid advance fees totaling \$87,040 to Respondents for residential loan
14 modification services.

15 **1.3 Prohibited Acts.** As stated above, on or about September 29, 2010, Respondent Clark
16 submitted a Claim of Non-Applicability to the Department, signed under penalty of perjury, asserting
17 that Respondents had not done any business in the State of Washington. However, this statement is
18 contradicted by documents from Respondent Maxim Mortgage which show advance fees received
19 from 49 Washington consumers for loan modification services.

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

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” means any person who, for compensation or gain, or in the expectation of
4 compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage
5 loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to
6 obtain a residential mortgage loan.

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

13 **2.3 Requirement to Obtain and Maintain Mortgage Broker License.** Based on the Factual
14 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.200(1)
15 and WAC 208-660-155 for engaging in the business of a mortgage broker without first obtaining and
16 maintaining a license under the Act.

17 **2.4 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents
18 are in apparent violation of RCW 19.146.0201(7), for negligently making a false statement or
19 knowingly and willfully making an omission of material fact in connection with an investigation
20 conducted by the Department.

1 **III. AUTHORITY TO IMPOSE SANCTIONS**

2 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 19.146.220(4), the
3 Director may issue orders directing a licensee, its employee, loan originator, independent contractor,
4 agent, or other person subject to the Act to cease and desist from conducting business.

5 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 19.146.220(5), the Director may
6 issue orders removing from office or prohibiting from participation in the conduct of the affairs of a
7 licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed
8 mortgage broker or any person subject to licensing under the Act for: any violation of RCW
9 19.146.0201(1), (2), (3), (7) or RCW 19.146.200.

10 **3.3 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2), the Director may order
11 restitution against licensees or other persons subject to the Act for any violation of the Act.

12 **3.4 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(e), the Director may impose
13 fines against a licensee or other persons subject to the Act for any violation of the Act.

14 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-
15 520(9) & (11), and WAC 208-660-550(4)(a), the Department will charge forty-eight dollars per hour
16 for an examiner's time devoted to an investigation of a licensee or other person subject to the Act.

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

18 Respondents' 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** Respondents Maxim Mortgage Solutions and David Clark cease and desist providing
23 or offering to provide residential loan modification services.

- 1 **4.2** Respondent Maxim Mortgage Solutions be prohibited from participation in the
2 conduct of the affairs of any mortgage broker subject to licensure by the Director, in
3 any manner, for a period of 5 years.
- 4 **4.3** Respondent David Clark be prohibited from participation in the conduct of the affairs
5 of any mortgage broker subject to licensure by the Director, in any manner, for a
6 period of 5 years.
- 7 **4.4** Respondents Maxim Mortgage Solutions and David Clark jointly and severally pay a
8 fine. As of the date of this Statement of Charges, the fine totals \$65,300.
- 9 **4.5** Respondents Maxim Mortgage Solutions and David Clark jointly and severally pay
10 restitution totaling at least \$72,942 to the 44 borrowers identified in the Restitution
11 Appendix attached to this Statement of Charges.²
- 12 **4.6** Respondents Maxim Mortgage Solutions and David Clark jointly and severally pay an
13 investigation fee. As of the date of this Statement of Charges, the investigation fee
14 totals \$933.60, calculated at \$48 per hour for the 19.45 examiner hours devoted to the
15 investigation to date.
- 16 **4.7** Respondents Maxim Mortgage Corp and David Clark maintain records in compliance
17 with the Act and provide the Department with the location of the books, records, and
18 other information relating to Respondents' mortgage broker business, and the name,
19 address, and telephone number of the individual responsible for maintenance of such
20 records in compliance with the Act.

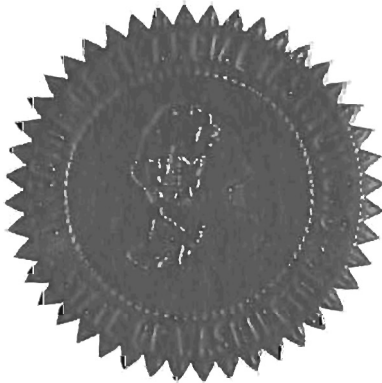
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² Prior to this Statement of Charges, Respondents made full refunds to 5 consumers and partial refunds to 5 consumers.

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.

7
8 Dated this 3rd day of February, 2012.



9 [Redacted signature]

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

14 Presented by:

15 [Redacted signature]

16 SHANA L. OLIVER
17 Financial Legal Examiner

18 Approved by:

19 [Redacted signature]

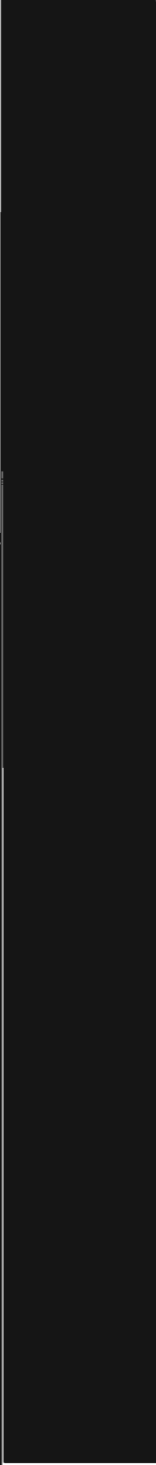
20 JAMES R. BRUSSELBACK
21 Enforcement Chief

RESTITUTION

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Consumer

Amount paid¹



\$900
\$215
\$1,650
\$150
\$1,950
\$1,650
\$1,650
\$1,950
\$1,650
\$1,650
\$1,650
\$1,950
\$1,650
\$1,650
\$1,650
\$2,500
\$1,950
\$1,650
\$1,950
\$1,650
\$650
\$1,650
\$962
\$1,950

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¹ As noted in the foregoing Statement of Charges, 49 Washington consumers paid Respondents advance fees. Five consumers received full refunds, and five consumers received partial refunds. Those consumers who have been refunded the total fee are not listed here.

1		\$1,950
2		\$1,650
3		\$1,650
4		\$2,500
5		\$1,650
6		\$1,600
7		\$1,650
8		\$1,915
9		\$1,650
10		\$1,650
11		\$2,150
12		\$1,650
13		\$1,950
14		\$1,950
15		\$1,650
16		\$1,650
17		\$1,950
18	Total	\$72,942