

# Terms Completed

## ORDER SUMMARY – Case Number: C-13-1251

**Name(s):** Bay Equity LLC; Bruce Kelly Kussman

**Order Number:** C-13-1251-13-CO01

**Effective Date:** \_\_\_\_\_

**License Number:** Bay Equity: DFI 52086 NMLS ID: 76988  
Kussman: DFI 40008 NMLS ID: 90636

**Or NMLS Identifier [U/L]** (Revoked, suspended, stayed, application denied or withdrawn)  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

**Not Apply Until:** n/a

**Not Eligible Until:** n/a

**Prohibition/Ban Until:** n/a

<b>Investigation Costs</b>	\$1,556.18	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 9/25/13
<b>Fine (each)</b>	\$2,000	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 9/25/13
<b>Assessment(s)</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Restitution</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Judgment</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Satisfaction of Judgment Filed?</b>		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

**Comments:** \_\_\_\_\_

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1 are agreeing not to contest the Statement of Charges in consideration of the terms of this Consent  
2 Order.

3 Based upon the foregoing:

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

6 **B. Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a  
7 hearing before an administrative law judge, and hereby waive their right to a hearing and any and all  
8 administrative and judicial review of the issues raised in this matter, or of the resolution reached  
9 herein. Accordingly, Respondents, by their signatures below, withdraw their appeal to the Office of  
10 Administrative Hearings.

11 **C. No Admission of Liability.** The parties intend this Consent Order to fully resolve the  
12 Statement of Charges and agree that Respondents neither admit nor deny any wrongdoing by its  
13 entry.

14 **D. Fine.** It is AGREED that Respondents shall each pay a fine to the Department in the  
15 amount of \$2,000, in the form of a cashier's check made payable to the "Washington State  
16 Treasurer," upon entry of this Consent Order.

17 **E. Investigation Fee.** It is AGREED that Respondent Bay Equity shall pay to the  
18 Department an investigation fee of \$1,556.18, in the form of a cashier's check made payable to the  
19 "Washington State Treasurer," upon entry of this Consent Order.

20 **F. Authority to Execute Order.** It is AGREED that the undersigned have represented and  
21 warranted that they have the full power and right to execute this Consent Order on behalf of the  
22 parties represented.

23 **G. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to  
24 abide by the terms and conditions of this Consent Order may result in further legal action by the

1 Director. In the event of such legal action, Respondents may be responsible to reimburse the Director  
2 for the cost incurred in pursuing such action, including but not limited to, attorney fees.

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

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

7 **RESPONDENTS:**

8 **Bay Equity, LLC**

9 By:

10 

11 Brett McGovern  
12 President

13 9/20/2013  
14 Date

15 Bruce Kelly Kussman  
16 Individually

17 Date

18 Approved for Entry:

19 

20 John L. Bley, WSBA No. 15230  
21 Foster Pepper, PLLC  
22 Attorney for Respondents

23 9/18/2013  
24 Date

DO NOT WRITE BELOW THIS LINE

1 Director. In the event of such legal action, Respondents may be responsible to reimburse the Director  
2 for the cost incurred in pursuing such action, including but not limited to, attorney fees.

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

5 1. **Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read  
6 this Consent Order in its entirety and fully understand and agree to all of the same.

7 **RESPONDENTS:**  
8 **Bay Equity, LLC**  
9 By:

10 \_\_\_\_\_  
11 Brett McGovern  
12 President

\_\_\_\_\_ Date

13 

9/19/2013  
\_\_\_\_\_ Date

14 Bruce Kelly Kussman  
15 Individually

16 Approved for Entry:

17 \_\_\_\_\_  
18 John L. Bley, WSBA No.15230  
19 Foster Pepper, PLLC  
20 Attorney for Respondents

\_\_\_\_\_ Date

21 DO NOT WRITE BELOW THIS LINE

1 THIS ORDER ENTERED THIS 1<sup>st</sup> DAY OF October, 2013

2 [Redacted Signature]

3  
4 DEBORAH BORTNER  
5 Director, Division of Consumer Services  
6 Department of Financial Institutions

6 Presented by:

7 [Redacted Signature]

8 DEVON P. PHELPS  
9 Financial Legal Examiner



9 Approved by:

10 [Redacted Signature]

11 CHARLES E. CLARK  
12 Enforcement Chief

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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  
Consumer Loan Act of Washington by:

BAY EQUITY, LLC, NMLS #76988, and  
BRUCE KELLY KUSSMAN, Loan Originator,  
NMLS #90636,

Respondents.

No.: C-13-1251-13-SC01

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

**INTRODUCTION**

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, 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. Bay Equity, LLC (Bay Equity)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on or about July 8, 2009, and continues to be licensed to date.

**B. Bruce Kelly Kussman (Kussman)** was licensed by the Department to conduct business as a loan originator on or about June 15, 2007, and continues to be licensed to date.

Respondent Kussman was sponsored by Respondent Bay Equity on March 29, 2012, and continues to be sponsored by Respondent Bay Equity as of the date of this Statement of Charges.

1 **1.2 Unfair and Deceptive Acts.** During January 2013, Heather Cole (Cole)<sup>1</sup>, a loan originator at  
2 TriStar Finance, Inc. (TriStar), was approached by borrowers [REDACTED] and [REDACTED]. about refinancing their  
3 residential mortgage loan through TriStar. Email communication between Cole and the borrowers  
4 was conducted exclusively from Cole's TriStar company email address. Without the borrowers'  
5 knowledge or consent, and without disclosing the application to TriStar, Cole transferred the  
6 borrowers' refinance transaction to Respondent Bay Equity. As Cole was still working for TriStar,  
7 the disclosures and application were created by Respondent Kussman, a loan originator at  
8 Respondent Bay Equity. Respondent Kussman never communicated with the borrowers, however,  
9 and throughout the transaction the borrowers believed Cole was their loan originator. Respondent  
10 Bay Equity was aware that Cole, not Respondent Kussman, was the true loan originator on the file.

11 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the  
12 Act by Respondents continues to date.

## 13 II. GROUNDS FOR ENTRY OF ORDER

14 **2.1 Liability for Actions of Employees.** Pursuant to WAC 208-620-372, licensed consumer loan  
15 companies are liable for violations of the Act by employees.

16 **2.2 Unfair and Deceptive Acts.** Based on the Factual Allegations set forth in Section I above,  
17 Respondents are in apparent violation of RCW 31.04.027(2) and WAC 208-620-700(2) for  
18 originating the borrowers' refinance transaction through Bay Equity without TriStar or the  
19 borrowers' consent or knowledge.

## 20 III. AUTHORITY TO IMPOSE SANCTIONS

21 **3.1 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of  
22 up to one hundred dollars per day upon the licensee for any violation of the Act.

23  
24 <sup>1</sup> Heather Cole's activities are being addressed under C-13-1275-13-SC01.



1 **3.2 Authority to Collect Cost of Investigation.** Pursuant to RCW 31.04.145(3) and WAC 208-  
2 620-590, every licensee investigated by the Director or the Director's designee shall pay to the  
3 Director the cost of the investigation, calculated at the rate of \$69.01 per hour.

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

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

9 **4.1** Respondents Bay Equity, LLC pay a fine in the amount of \$2,000.

10 **4.2** Respondent Bruce Kelly Kussman pay a fine in the amount of \$2,000.

11 **4.3** Respondents Bay Equity, LLC and Bruce Kelly Kussman jointly and severally pay an  
12 investigation fee which totals \$1,556.18 as of the date of this Statement of Charges. Any  
13 investigation fee will also be joint and several with any Respondent found to be in  
14 violation of the Act under C-13-1275-13-SC01.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an Order to Impose Fine and  
3 Collect Investigation Fee (Statement of Charges) is entered pursuant to the provisions of RCW  
4 31.04.093, RCW 31.04.165, RCW 31.04.202 and RCW 31.04.205, and is subject to the provisions of  
5 chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request  
6 for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY  
7 FOR HEARING accompanying this Statement of Charges.

8  
9 Dated this 2<sup>nd</sup> day of July, 2013

[Redacted Signature]

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

12 Presented by:  
13 [Redacted Signature]

14 DEVON P. PHELPS  
Financial Legal Examiner

15 Approved by:  
16 [Redacted Signature]

17 CHARLES E. CLARK  
Enforcement Chief

