

ORDER SUMMARY – Case Number: C-14-1513

Name(s): Ms Diana Joline Merritt

Order Number: C-14-1513-18-FO01

Effective Date: February 28, 2018

License Number: NMLS #106586
Or NMLS Identifier [U/L] _____

License Effect:

Not Apply Until:

Not Eligible Until:

Prohibition/Ban Until: Permanent prohibition

Investigation Costs	\$3,384.82	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Fine	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
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: Investigation cost above is the cost of prosecution.



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

DIANA JOLINE MERRITT,

Respondent.

NO. C-14-1513-18-FO01

OAH No. 05-2017-DFI-00032

FINAL DECISION & ORDER

THIS MATTER has come before GLORIA PAPIEZ, Director (“Director”) of the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS (“Department”), pursuant to the following:

(1) The Initial Order on Summary Judgment Motion (“Initial Order”) issued by Administrative Law Judge Debra H. Pierce of the Office of Administrative Hearings (“ALJ Pierce”) against DIANA JOLINE MERRITT (“Respondent”) in the above entitled matter, which was issued and served by mail on October 17, 2017;

(2) Respondent’s Petition for Review (“Petition for Review”), in the form of a letter, which was dated November 1, 2017, and which was not filed with the Department until November 7, 2017;

(3) The Motion for Reconsideration of the Initial Order (“Motion for Reconsideration”) by the Division of Consumer Services (“Division”), dated October 23, 2017; and

(4) The Findings of Fact,¹ Conclusions of Law,² and Amended Initial Order on Summary Judgment Motion dated and served by mail on January 8, 2018 (“Amended Initial Order”).

NOW, THEREFORE, having taken into consideration the entire record on review, including, without limitation, the Initial Order, the Petition for Review, the Motion for Reconsideration, and the Amended Initial Order (collectively, the “Record on Review”), the Director issues the following Final Decision and Order:

1.0 SUMMARY OF THE CASE³

Respondent was licensed under the Washington Mortgage Broker Practices Act (“WMBPA”)⁴ by the Department to conduct business as a loan originator from April 24, 2007, through December 31, 2014. The King County Prosecutor charged Respondent with ten counts of the crime of mortgage fraud,⁵ and she was *found guilty* following a bench trial at which she was represented by counsel.⁶ Through counsel, she appealed her criminal conviction. However, the conviction – including the specific findings of fact and conclusions of law of the trial court – was affirmed by the Washington State Court of Appeals, Division One.⁷ The Record on Review indicates no further adjudication of this criminal conviction.

Respondent is charged in *this* non-criminal, administrative adjudication with directly or indirectly employing a scheme, device, or artifice to defraud or mislead borrowers or lenders or by engaging in an unfair or deceptive practice toward any person, and obtaining property by fraud

¹ References to specific Findings of Fact of the Amended Initial Order are denoted “FOF.”

² References to specific Conclusions of Law of the Amended Initial Order are denoted “COL.”

³ This is not a substitute for the Findings of Fact or Conclusions of Law of the Amended Initial Order, which the Director affirms.

⁴ Chapter 19.146 RCW.

⁵ RCW 19.144.080 and RCW 19.144.090.

⁶ The Director takes official notice of the Findings of Fact, Conclusions of Law, and Order of Conviction in *State of Washington v. Diana Joline Merritt*, Superior Court of Washington, King County, Docket No. 14-C-02955-8 SEA; see also *Amended Initial Order, FOF 4.7*.

⁷ *State of Washington v. Diana Joline Merritt*, No. 74469-1 (Wa. Ct. of App., Div. I, August 21, 2017; see also *Amended Initial Order, FOF 4.8*).

or misrepresentation, in violation of the WMBPA.⁸ King County Superior Court already found Respondent guilty in her criminal case *beyond a reasonable doubt*⁹ of employing an artifice, scheme, or device to materially mislead borrowers and lenders, engaging in unfair or deceptive acts or practices in the lending process, and obtaining property by fraud or misrepresentation.¹⁰

In her Petition for Review, which was untimely,¹¹ Respondent has tried in effect to *re-litigate* whether she is guilty or not. However, under the doctrine of collateral estoppel, one *cannot* re-litigate an issue after the party against whom the doctrine is applied has had a full and fair opportunity to litigate her case,¹² which she did in both King County Superior Court and the Washington Court of Appeals, Division One, to no avail.

Respondent's Petition for Review is totally without merit as a matter of law.

2.0 DIRECTOR'S CONSIDERATION & DETERMINATION

2.1 The Petition for Review Is Barred by Collateral Estoppel. Respondent's Petition for Review is barred by the *doctrine of collateral estoppel* as a matter of law¹³ and, consequently, there is no issue of material fact to resolve.¹⁴ When there is no issue of material fact to resolve, the Division is entitled to summary judgment as a matter of law.

2.2 Untimely Filing of the Petition for Review. The Initial Order was issued and served by mail on October 17, 2017.¹⁵ While dated November 1, 2017, Respondent's letter to the "Director of Financial Institutions," which the Director has treated as a Petition for Review, was

⁸ RCW 19.146.0201(1), (2), and (3).

⁹ The standard of proof for deprivation and prohibition of a state license requires a lesser standard of proof. All that is required is proof by a *preponderance of the evidence*. *Hardee v. State, Dept. of Social and Health Services*, 172 Wash.2d 1, 256 P.3d 339 (En Banc – 2011). Of course, because there has been a criminal conviction beyond a reasonable doubt, ALJ Pearce and the Director are not required to weigh the evidence further by a preponderance. The Division is entitled to summary judgment as a matter of law. See *Footnote 11*, below.

¹⁰ Amended Initial Order, *COL 5.8*.

¹¹ See *Subsection 2.1* below.

¹² See *Nielson v. Spanaway Gen. Medical Clinic, Inc.*, 135 Wash.2d 255, 956 P.2d 312 (1998); see also Amended Initial Order, *COL 5.9*.

¹³ *Id.*

¹⁴ Amended Initial Order, *COL 5.11*.

¹⁵ See Record on Review, Certificate of Mailing, contained in the Initial Order.

not received by the Department or the Director specifically until November 7, 2017. Under the Model Rules of Procedure of the Washington Administrative Procedures Act,¹⁶ a petition for review was required to be filed with the Director within twenty (20) days of the date of service by mail of the Initial Order unless a different place and time limit for filing such petition was specified in the Initial Order.¹⁷ The Initial Order contained no alternative deadline for filing a Petition for Review. Indeed, the Initial Order contained a specific page notifying the Respondent of the requirements for filing a Petition for Review under the Washington Model Rules of Procedure.¹⁸

Under the Washington Model Rules of Procedure, the Director received Respondent's Petition for Review one day late. While the Office of the Director has on occasion in the past exercised its discretion to accord leniency to the timing of a filing of a petition for review based on extraordinary circumstances, there appear to be no such grounds for leniency here.

The Petition for Review was untimely and not entitled to consideration.

2.3 Failure to Object to the Amended Initial Order. Subsequently, on January 8, 2018, the Director issued an Amended Initial Order pursuant to a Motion for Reconsideration brought by the Division. If Respondent had wanted to file a Petition for Review to the Amended Initial Order, she would have had until Monday, January 29, 2018,¹⁹ to do so. The Amended Initial Order contained the same notice to Respondent informing her of the time to file a timely petition for review of the Amended Initial Order.²⁰ Respondent never filed a Petition for Review of the Amended Initial Order.

¹⁶ Chapter 10-08 WAC, under authority of RCW 34.05.250.

¹⁷ WAC 10-08-211(2).

¹⁸ See Page 11 of the Initial Order.

¹⁹ The next business day after January 28, 2018, which was twenty days after the issuance and service by mail of the Amended Initial Order. See *Subsection 2.1* above.

²⁰ Amended Initial Order, pp. 11-12.

2.4 Director's Deliberation — Conclusion. Respondent's Petition for Review is not entitled to consideration, based on both its untimeliness and the doctrine of collateral estoppel. The Division is entitled to summary judgment as a matter of law and to affirmation of the Amended Initial Order.

3.0 FINDINGS OF FACT & CONCLUSIONS OF LAW

For all of the reasons set forth in Section 2.0 above, the Director makes the following Findings of Fact and Conclusions of Law:

3.1 Findings of Fact. The Findings of Fact of the Amended Initial Order are affirmed and incorporated herein by this reference.

3.2 Conclusions of Law. The Conclusions of Law of the Amended Initial Order are affirmed and incorporated herein by this reference.

4.0 FINAL DECISION & ORDER

The Director having made Findings of Fact and Conclusions of Law,
NOW, THEREFORE, IT IS HEREBY ORDERED:

4.1 Petition for Review Denied. The Respondent's Petition for Review is *denied*;

4.2 Summary Judgment Affirmed. The Amended Initial Order granting Summary Judgment is *affirmed*;

4.3 Prohibition from Industry. The Respondent, DIANA JOLINE MERRITT, is *prohibited* from participation in the affairs of any licensee or any other person subject to licensure under the Washington Mortgage Broker Practices Act, in accordance with RCW 19.146.220(5)(a), for violation of RCW 19.146.0201(1), (2), and (3); and

4.4 Costs of Investigation Assessed. The Respondent, DIANA JOLINE MERRITT, is assessed and shall pay to the order of WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS the *costs and expenses of prosecution* of this matter in the amount of Three Thousand Three Hundred Eighty-Four Dollars and Eighty-Two Cents (\$3,384.82), in accordance with RCW 19.146.221(2).²¹

5.0 RECONSIDERATION

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

6.0 STAY OF ORDER

The Director 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.

²¹ In her Amended Initial Order, *COL 5.19*, at p. 10, ALJ Pearce made a scrivener's error by incorrectly citing the statutory provision as RCW 19.446.221(2). [Emphasis added.] This is harmless error and has been corrected in this Final Decision and Order.

7.0 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.

8.0 SERVICE

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

9.0 EFFECTIVENESS AND ENFORCEMENT OF FINAL ORDER

Pursuant to the Administrative Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective immediately upon deposit in the United States Mail.

Dated at Tumwater, Washington, on this 28th day of February, 2018.

WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS

By: /s/

Gloria Papiez, Director

NOTICE TO THE PARTIES

In accordance with RCW 34.05.470 and WAC 10-08-215, any Petition for Reconsideration of this FINAL DECISION & ORDER must be filed with the Director within ten (10) days of service of this FINAL DECISION & ORDER. It should be noted that Petitions for Reconsideration do not stay the effectiveness of said FINAL DECISION & ORDER. Judicial Review of this FINAL DECISION & ORDER is available to a party according to provisions set out in the Washington Administrative Procedure Act, RCW 34.05.570.

This is to certify that this FINAL DECISION & ORDER has been served upon the following parties on February 28, 2018, by depositing a copy of same in the United States mail, postage prepaid.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By: /s/
Susan Putzier
Executive Assistant to the Director

Mailed to the following:

Respondent:

DIANA JOLINE MERRITT
115 – 5th Avenue, #7
Kirkland, WA 98033

Attorney for the Division:

JONG M. LEE, Esq.
Assistant Attorney General
OFFICE OF ATTORNEY GENERAL
P.O. Box 40100
Olympia, WA 98504-0100

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
Mortgage Broker Practices Act of Washington by:
5 DIANA JOLINE MERRITT,
NMLS ID# 106586,
6 Respondent.

No. C-14-1513-17-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER AN
ORDER TO PROHIBIT FROM INDUSTRY
AND RECOVER COSTS AND EXPENSES

7 **INTRODUCTION**

8 Pursuant to RCW 19.146.220 and RCW 19.146.223, the Acting Director of the Department of
9 Financial Institutions of the State of Washington (Acting Director) is responsible for the
10 administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). After having
11 conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of the
12 date of this Statement of Charges, the Acting Director, through her designee, Division of Consumer
13 Services Director Charles E. Clark, institutes this proceeding and finds as follows:
14

15 **I. FACTUAL ALLEGATIONS**

16 **1.1 Respondent Diana Joline Merritt (Merritt)** was licensed by the Department of Financial
17 Institutions of the State of Washington (Department) to conduct business as a loan originator from
18 April 24, 2007, and continued to be licensed until December 31, 2014.

19 **1.2 Prohibited Acts.** Between at least June 12, 2008, and June 10, 2009, Respondent Merritt
20 took ten applications for residential mortgage loans secured by Washington properties. For each of
21 these applications, Respondent Merritt obtained an appraisal from Douglas White, an unlicensed
22 appraiser. Douglas White prepared appraisal reports which stated that they were prepared by Tom
23 Reed, a licensed appraiser, and included Tom Reed's electronic signature. Respondent Merritt knew
24 that these reports were not prepared by Tom Reed. Respondent Merritt provided these appraisal

1 reports to lenders as the basis for the value of the residential properties securing these loans. At the
2 closing of these loans, Respondent Merritt received payment for brokering them.

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

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 removing from office or prohibiting from participation in the conduct of the affairs of a
14 licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed
15 mortgage broker or any person subject to licensing under the Act for any violation of RCW
16 19.146.0201(1) through (9).

17 **3.2 Authority to Recover Costs and Expenses.** Pursuant to RCW 19.146.221(2), the Director
18 may recover the state's costs and expenses for prosecuting violations of the Act.

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

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

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). Respondent 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 2nd day of February, 20187.

9
10 /s/
11 CHARLES E. CLARK
12 Director
13 Division of Consumer Services
14 Department of Financial Institutions

15 Presented by:

16 /s/
17 ROBERT E. JONES
18 Financial Legal Examiner

19 Approved by:

20 /s/
21 STEVEN C. SHERMAN
22 Enforcement Chief