

ORDER SUMMARY – Case Number: C-17-2135

Name(s): AmericaWest Financial LLC
James Manley Rendahl

Order Number: C-17-2135-18-CO01

Effective Date: 3/22/18

License Number: Rendahl 68661, AmericaWest 66531
Or NMLS Identifier [U/L]

License Effect: Revocation (stayed two years subject to compliance exam results)

Not Apply Until: _____

Not Eligible Until: _____

Prohibition/Ban Until: _____

Investigation Costs	\$1,700	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 3/21/2018
Fine	\$48,300 (\$40,000 stayed...)	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date \$8,300 pd 3/21/2018
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: _____

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:

No. C-17-2135-18-CO01

CONSENT ORDER

5 AMERICAWEST FINANCIAL, LLC,
NMLS # 66531, and
6 JAMES M. RENDAHL, Designated Broker,
NMLS # 68661

7 Respondents.

8 COMES NOW the Director of the Department of Financial Institutions (Director), through
9 her designee Charles E. Clark, Division Director, Division of Consumer Services, AmericaWest
10 Financial, LLC (Respondent AmericaWest), and James M. Rendahl (Respondent Rendahl), and
11 finding that the issues raised in the above-captioned matter may be economically and efficiently
12 settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter
13 19.146 of the Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative
14 Procedure Act, based on the following:

15 **AGREEMENT AND ORDER**

16 The Department of Financial Institutions, Division of Consumer Services (Department) and
17 Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges
18 No. C-17-2135-17-SC01 (Statement of Charges), entered April 27, 2017, (copy attached hereto).
19 Pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act (Act), and RCW 34.05.060 of
20 the Administrative Procedure Act, Respondents hereby agree to the Department's entry of this
21 Consent Order and further agree that the issues raised in the above-captioned matter may be
22 economically and efficiently settled by entry of this Consent Order. Respondents are agreeing not
23 to contest the Statement of Charges in consideration of the terms of this Consent Order.

1 Based upon the foregoing:

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

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

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

12 **D. Mortgage Broker License Revocation.** It is AGREED that Respondent AmericaWest's
13 mortgage broker license is subject to revocation. It is further AGREED that Respondent
14 AmericaWest's mortgage broker license revocation is STAYED for a period of two years from the
15 date of this Consent Order, subject to the stay being lifted or nullified as provided in Section I below.

16 **E. Fine.** It is AGREED that Respondents shall pay a fine to the Department in the amount of
17 \$48,300. It is further AGREED that Respondents shall pay \$8,300 of the fine upon entry of this
18 Consent Order (Imposed Fine). Payment of the remaining \$40,000 is STAYED for a period of two
19 years following the date of this Consent Order, subject to the stay being lifted or nullified as provided
20 in Section I below.

21 **F. Investigation Fee.** It is AGREED that Respondents shall pay to the Department an
22 investigation fee of \$1,700 upon entry of this Consent Order. The Imposed Fine and Investigation
23

1 Fee shall be paid together in one \$10,000 cashier's check made payable to the "Washington State
2 Treasurer."

3 **G. Branch License Applications.** It is AGREED that the Department shall process in due
4 course the six (6) branch license applications currently filed with the Department and that no
5 additional application fees shall be required. Neither the fact of this Consent Order nor the
6 allegations of the underlying Statement of Charges shall be considered when evaluating the six (6)
7 pending branch license applications for issuance. It is further AGREED that Respondents will not
8 permit any employee to take residential mortgage loan applications or offer or negotiate terms of
9 residential mortgage loans from any unlicensed location.

10 **H. Compliance Examination.** It is AGREED that the Department may conduct a
11 compliance examination of Respondent AmericaWest approximately 18 months following entry of
12 this Consent Order. The date of the examination shall be determined by the availability of the
13 Department's examiners. Respondents AGREE to reimburse the Department for the costs of the
14 compliance examination. The period of examination shall be from the date of this Consent Order
15 through the date of the compliance examination, and the scope of the compliance examination will be
16 limited to determining whether Respondents have repeated any of the violations alleged in Statement
17 of Charges C-17-2135-17-SC01.

18 **I. Lifting of Stay.** It is AGREED that the Department may seek to lift the stay and impose
19 the stayed license revocation and stayed portion of the Fine against Respondents subject to the
20 following terms:

- 21 **1.** The Department may seek to lift the stay at any time within the two year stay period
22 if the Department determines that Respondents are in violation of the terms of this
Consent Order.
- 23 **2.** The Department may seek to lift the stay at any time between the completion of the
24 compliance examination and the end of the two year stay period if the results of the

1 examination show Respondents repeated any of the violations alleged in Statement
2 of Charges C-17-2135-17-SC01.

- 3 **3.** If the Department seeks to lift the stay, the Department shall serve Respondents
4 with a written notice of noncompliance. The notice of noncompliance shall include:
- 5 **a.** a description of the alleged noncompliance,
 - 6 **b.** a statement of the Department's intent to lift the stay,
 - 7 **c.** notice that Respondents may contest the allegations of noncompliance by either
8 requesting an adjudicative hearing in writing or submitting a written response to
9 the allegations of noncompliance, and
 - 10 **d.** notice that the process for lifting the stay applies only to this Consent Order.
- 11 **4.** Respondents will be afforded 20 business days from the date of service of the notice
12 of noncompliance to submit to the Department either a written request for an
13 adjudicative hearing or a written response to the allegations of noncompliance.
- 14 **5.** The scope and issues of the adjudicative hearing shall be limited to whether
15 Respondents have failed to comply with the terms of this Consent Order and/or
16 whether the results of Respondents' compliance examination include a repeat of any
17 violation alleged in Statement of Charges C-17-2135-17-SC01.
- 18 **6.** At the conclusion of the adjudicative hearing the Administrative Law Judge will
19 issue an initial decision. Either party may subsequently file a Petition for Review
20 with the Director.
- 21 **7.** If Respondents do not timely request an adjudicative hearing or submit a written
22 response to the notice of noncompliance, the Department may lift the stay without
23 further notice.
- 24 **8.** If the Department has not moved to lift the stayed revocation and fine within the
two year period immediately following the entry of this Consent Order, the stayed
revocation and fine shall be nullified.

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

21 **K. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to
22 abide by the terms and conditions of this Consent Order may result in further legal action by the
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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 **L. 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 **M. 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 **N. Counterparts.** This Consent Order may be executed by the Respondents in any number
8 of counterparts, including by facsimile or e-mail of a .pdf or similar file, each of which shall be
9 deemed to be an original, but all of which, taken together, shall constitute one and the same Consent
10 Order.

11 **RESPONDENTS:**

12 AmericaWest Financial, LLC

13 By:

14 /s/
15 JAMES M. RENDAHL
16 Designated Broker

3/14/18
Date

17 /s/
18 JAMES M. RENDAHL
19 Individually

3/14/18
Date

20 Approved for Entry:

21 /s/
22 JOHN A. LONG, WSBA #15119
23 Attorney for Respondents

3/20/18
Date

24 **DO NOT WRITE BELOW THIS LINE**

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THIS ORDER ENTERED THIS 22nd DAY OF March, 2018.

/s/
CHARLES E. CLARK
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

/s/
KENNETH J. SUGIMOTO
Financial Legal Examiner

Approved by:

/s/
STEVEN C. SHERMAN
Enforcement Chief

1 **1.2 Examination.** From December 5, 2016, through December 8, 2016, the Department
2 conducted an examination of Respondent AmericaWest’s business practices for the period of May 1,
3 2015, through October 31, 2016. The Department reviewed 30 loan files and found violations of the
4 Act which include those set forth below. Respondent Rendahl was designated broker of Respondent
5 AmericaWest for each of the 30 loan files.

6 **1.3 Unlicensed Locations.** Between May 1, 2015, and October 31, 2016, at least 10 loan
7 originators operating under Respondent AmericaWest’s mortgage broker license took at least 103
8 loan applications from at least 10 locations that were not approved for a license by the Department.

9 **1.4 False or Deceptive Advertising Term.** Between May 1, 2015, and October 31, 2016,
10 Respondent AmericaWest and at least one of its loan originators made false or deceptive statements
11 by using the word, “best,” in advertising Respondent AmericaWest’s loan offerings.

12 **1.5 Unapproved Trade Name.** Between May 1, 2015, and October 31, 2016, at least one loan
13 originator operating under Respondent AmericaWest’s mortgage broker license advertised
14 Respondent AmericaWest’s loan offerings using a trade name not approved by the Department.

15 **1.6 Failed to Display License Numbers.** Between May 1, 2015, and October 31, 2016, at least
16 two loan originators operating under Respondent AmericaWest’s mortgage broker license maintained
17 web sites that did not display the loan originator’s license number, Respondent AmericaWest’s
18 mortgage broker license number, or both.

19 **1.7 Disclosures.** In at least one loan file, a one loan originator operating under Respondent
20 AmericaWest’s mortgage broker license advertised Respondent AmericaWest’s loan offerings using
21 terms that required additional disclosures, and did not provide the required additional disclosures. In
22 at least one loan file, Respondent AmericaWest failed to provide a disclosure to a borrower stating
23 that a loan originator operating under Respondent AmericaWest’s mortgage broker license was an
24 associate of a real estate broker who represented the borrower in the same transaction. In at least 11

1 loan files, Respondent AmericaWest failed to provide borrowers with complete and accurate loan
2 estimates within three days of application.

3 **1.8 Prohibited Acts.** Respondent AmericaWest failed to comply with federal law applicable to
4 the activities governed by the Act by accepting the use of free office space and free advertising from
5 three unrelated real estate companies in exchange for settlement services. Respondent AmericaWest
6 failed to comply with federal law applicable to the activities governed by the Act by operating a loan
7 originator compensation plan that paid loan originators based on the terms or conditions of loan
8 transactions.

9 **1.9 On-Going Investigation.** The Department's investigation into the alleged violations of the
10 Act by Respondents continues to date.

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

12 **2.1 Responsibility for Conduct of Loan Originators.** Pursuant to RCW 19.146.245, a licensed
13 mortgage broker is liable for any conduct violating the Act by the designated broker, a loan
14 originator, or other licensed mortgage broker while employed or engaged by the licensed mortgage
15 broker.

16 **2.2 Responsibility of Designated Broker.** Pursuant to RCW 19.146.200(3), every licensed
17 mortgage broker must at all times have a designated broker responsible for all activities of the
18 mortgage broker in conducting the business of a mortgage broker. A designated broker who has
19 supervisory authority over a mortgage broker is responsible for a licensee's, employee's, or
20 independent contractor's violations of the Act if: the designated broker directs or instructs the
21 conduct or, with knowledge of the specific conduct, approves or allows the conduct; or the designated
22 broker knows or by the exercise of reasonable care and inquiry should have known of the conduct, at
23 a time when its consequences can be avoided or mitigated and fails to take reasonable remedial
24 action.

1 **2.3 Requirement to Obtain and Maintain Branch License.** Based on the Factual Allegations
2 set forth in Section I above, Respondents are in apparent violation of RCW 19.146.265 and WAC
3 208-660-195 for engaging in the business of a mortgage broker from a location not licensed by the
4 Department.

5 **2.4 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents
6 are in apparent violation of RCW 19.146.0201(2), (6), (7), (11), (14), and (16) for directly or
7 indirectly engaging in any unfair or deceptive practice toward any person, failing to make disclosures
8 to loan applicants and noninstitutional investors as required by RCW 19.146.030 any other applicable
9 state or federal law, making in any manner, any false or deceptive statement or representation with
10 regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or
11 engaging in bait and switch advertising, failing to comply with state and federal laws relating to the
12 activities governed by the Act, failing to disclose to a borrower prior to providing mortgage services
13 that the borrower's loan originator or associate also served as the borrower's real estate broker, and
14 originating loans from any unlicensed location.

15 **2.5 Advertising under Unlicensed Name.** Based on the Factual Allegations set forth in Section
16 I above, Respondents are in apparent violation of RCW 19.146.250 and WAC 208-660-180(9) for
17 advertising under a name other than the one under that the license is issued without approval by the
18 Director.

19 III. AUTHORITY TO IMPOSE SANCTIONS

20 **3.1 Authority to Revoke License.** Pursuant to RCW 19.146.220(2), the Director may revoke
21 licenses for any violation of the Act.

22 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 19.146.220(4), the Director may
23 issue orders removing from office or prohibiting from participation in the conduct of the affairs of a
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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 the Act.

3 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2), the Director may impose fines
4 against a licensee, employees, independent contractors, agents of licensees, or other persons subject
5 to the Act for any violation of the Act.

6 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-
7 520(9) and (11), and WAC 208-660-550(4)(a), the Department will charge forty-eight dollars per
8 hour for an examiner's time devoted to an investigation.

9 **3.5 Authority to Recover Costs and Expenses.** Pursuant to RCW 19.146.221(2), the Director
10 may recover the state's costs and expenses for prosecuting violations of the Act.

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1 **IV. NOTICE OF INTENT 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 intent to ORDER that:

6 **4.1** Respondent AmericaWest Financial, LLC's license to conduct the business of a
7 mortgage broker be revoked.

8 **4.2** Respondent James M. Rendahl's license to conduct the business of a loan originator
be revoked.

9 **4.3** Respondent AmericaWest Financial, LLC and Respondent James M. Rendahl be
10 prohibited 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.

11 **4.4** Respondent AmericaWest Financial, LLC and Respondent James M. Rendahl jointly
12 and severally pay a fine. As of the date of this Statement of Charges, the fine totals
\$100,000.

13 **4.5** Respondent AmericaWest Financial, LLC and Respondent James M. Rendahl jointly
14 and severally pay an investigation fee. As of the date of this Statement of Charges, the
investigation fee totals \$1,700.

15 **4.6** Respondent AmericaWest Financial, LLC maintain records in compliance with the
16 Act and provide the Department with the location of the books, records and other
information relating to Respondent AmericaWest Financial, LLC's mortgage broker
17 business, and the name, address and telephone number of the individual responsible
for maintenance of such records in compliance with the Act.

18 **4.7** Respondent AmericaWest Financial, LLC and Respondent James M. Rendahl pay the
19 Department's costs and expenses for prosecuting violations of the Act in an amount to
20 be determined at hearing or by declaration with supporting documentation in event of
default by Respondent AmericaWest Financial, LLC or Respondent James M.
Rendahl.

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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 FOR ADJUDICATIVE HEARING AND
6 TO DEFEND accompanying this Statement of Charges.

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8 Dated this 27th day of April, 2017.

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

15 Presented by:

16 /s/ _____
17 KENNETH J. SUGIMOTO
18 Financial Legal Examiner

19 Approved by:

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