

ORDER SUMMARY – Case Number: C-18-2444

Name(s): McKinley Mortgage Company, LLC;
 Alaska Financial Company III, LLC; McKinley Mortgage Co, LLC;

Order Number: C-18-2444-18-CO01

Effective Date: 3/6/19

License Number: McKinley Mortgage Company, LLC: NMLS No. 206321
 Alaska Financial Company III, LLC: NMLS No. 1843838

Or NMLS Identifier [U/L]

License Effect:

Not Apply Until: 7 years from date Consent Order entered

Not Eligible Until:

Prohibition/Ban Until: 7 years from date Consent Order entered

Investigation Costs	\$ 1,000		Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$ 10,000 (stayed)	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
Financial Literacy and Education	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Cost of Prosecution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
	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
Consumer Loan Act of Washington by:

5 McKinley Mortgage Company, LLC,
NMLS No. 206321; Alaska Financial Company
6 III, LLC; McKinley Mortgage Co., LLC; and
Tobias Preston, NMLS No. 207182;

7 Respondents.

No.: C-18-2444-18-CO01

8 **CONSENT ORDER AS TO MCKINLEY**
MORTGAGE COMPANY, LLC (NMLS NO.
206321); ALASKA FINANCIAL COMPANY
III, LLC; AND MCKINLEY MORTGAGE
CO., LLC

9 COMES NOW the Director of the Department of Financial Institutions (Director), through
10 her designee Charles E. Clark, Division Director, Division of Consumer Services, and McKinley
11 Mortgage Company, LLC; Alaska Financial Company III, LLC; and McKinley Mortgage Co., LLC
12 (collectively "Respondent Companies"), and finding that the issues raised in the above-captioned
13 matter may be economically and efficiently settled, agree to the entry of this Consent Order. This
14 Consent Order is entered pursuant to chapter 31.04 of the Revised Code of Washington (RCW), and
15 RCW 34.05.060 of the Administrative Procedure Act, based on the following:

16 **AGREEMENT AND ORDER**

17 The Department of Financial Institutions, Division of Consumer Services (Department) and
18 Respondent Companies have agreed upon a basis for resolution of the matters alleged in Statement of
19 Charges No. C-18-2444-18-SC01 (Statement of Charges), entered December 18, 2018, (copy
20 attached hereto), solely as applied to Respondent Companies. Pursuant to chapter 31.04 RCW, the
21 Consumer Loan Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondent
22 Companies hereby agree to the Department's entry of this Consent Order and further agree that the
23 issues raised in the above-captioned matter may be economically and efficiently settled by entry of
24 this Consent Order. The parties intend this Consent Order to fully resolve the Statement of Charges
solely as applied to Respondent Companies.

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 Respondent Companies have been informed of
5 the right to a hearing before an administrative law judge, and hereby waive their right to a hearing
6 and any and all administrative and judicial review of the issues raised in this matter, or of the
7 resolution reached herein. Accordingly, Respondent Companies, by the signatures of their
8 representative below, withdraw their appeal to the Office of Administrative Hearings.

9 C. **Prohibition from Industry.** It is AGREED that, except as provided herein, for a period
10 of seven years from the date of entry of this Consent Order, Respondent Companies are prohibited
11 from participating, in any capacity, in the conduct of the affairs of any consumer loan company
12 licensed by the Department or subject to licensure or regulation by the Department.

13 D. **Application for License.** It is AGREED that, except as provided herein, for a period of
14 seven years from the date of entry of this Consent Order, Respondent Companies shall not apply to
15 the Department for any license under any name. It is further AGREED that, should Respondent
16 Companies apply to the Department for any license under any name at any time later than seven years
17 from the date of entry of this Consent Order, such applying Respondent Companies shall be required
18 to meet any and all application requirements in effect at that time.

19 E. **Monitorship.** It is ACKNOWLEDGED that the Respondent Companies are subject to
20 the terms of a March 22, 2018, Consent of Defendants McKinley Mortgage Co. LLC, McKinley
21 Mortgage Company, LLC, and Tobias J. Preston (Consent) and a March 27, 2018, Final Judgment as
22 to Defendants McKinley Mortgage Co. LLC, McKinley Mortgage Company, LLC, and Tobias J.
23 Preston (Judgment), entered by the United States District Court for the Eastern District of California
24 in the action styled SEC v. McKinley Mortgage Co. LLC, et al, Case No. 2:18-cv-00616-MCE-CMK.

1 It is further ACKNOWLEDGED that following entry of the Judgment, and in accordance therewith,
2 Krista L. Freitag, through E3 Advisors, Inc., a California Corporation D/B/A/ E3 Advisors (Monitor),
3 was appointed and engaged as the Independent Manager and Monitor with regard to the Respondent
4 Companies pursuant to an April 3, 2018, Independent Manager/Monitor Engagement Agreement
5 (Letter Agreement). Pursuant to the Consent, Judgment, and Letter Agreement, Monitor was
6 authorized to or charged with marshalling and administering the assets of, and undertaking activities
7 incidental to the operation and winding-down of, the affairs of the Respondent Companies, and
8 thereafter making distributions to the investors from available sale proceeds.

9 **F. Limited Admissions.** Monitor does not admit or otherwise acknowledge any wrongdoing
10 or conduct that is inconsistent with the admissions and statements in the Consent and Judgment.

11 **G. Loan Portfolio.** It is ACKNOWLEDGED that Respondent Companies currently own or
12 are involved in the servicing of seven loans (Existing Loans) made to consumers and/or concerning
13 single family residences that serve as collateral for loans in the State of Washington. Pursuant to the
14 Consent, Judgment, and Letter Agreement, the Monitor is responsible for, among other things,
15 administering the Existing Loans following any default by the borrower(s) and for monetizing the
16 Existing Loans in a manner consistent with the Letter Agreement for the benefit of investors in the
17 Respondent Companies. It is ACKNOWLEDGED and AGREED that the Monitor and the
18 Respondent Companies will proceed with the sale or disposition the Existing Loans as soon as
19 practicable in accordance with the Judgment and Letter Agreement. It is further
20 ACKNOWLEDGED and AGREED that the Monitor and the Respondent Companies will only allow
21 the Existing Loans to be serviced by or sold to properly licensed or exempt entities, and will notify
22 the Department of the identity of any servicer or buyer within 14 days of servicing assignment or
23 purchase.

24 **H. Fine (Stayed).** It is AGREED that Respondent Companies shall pay a fine to the

1 Department in the amount of \$10,000, with the entire \$10,000 fine stayed for two years contingent
2 upon Respondent Companies' compliance with the Act and this Consent Order.

3 **I. Expiration of Stayed Fine.** It is AGREED that, absent an action by the Department to
4 lift the stay pursuant to Paragraph J, the stayed fine identified in Paragraph H shall expire two years
5 from the date of entry of this Consent Order without further action or notice by the Department

6 **J. Lifting of Stay and Imposition of Stayed Fine.** It is AGREED that:

7 1. If, during the two-year stay, the Department determines that any Respondent Company
8 has not complied with the Act or this Consent Order, and the Department seeks to lift
9 the stay and impose the stayed fine identified in Paragraph H, the Department will first
10 serve Respondent Companies with a written notice of alleged noncompliance.

11 2. The notice will include:

12 i. A description of the alleged noncompliance;

13 ii. A statement that the Department seeks to lift the stay and impose the stayed fine;

14 iii. Notice that Respondent Companies can contest the notice of alleged

15 noncompliance by either requesting an adjudicative hearing before an OAH

16 Administrative Law Judge, or by submitting a written response to the

17 Department contesting the alleged noncompliance; and

18 iv. Notice that the notification and adjudicative hearing process provided in this

19 subsection applies only to this Consent Order and solely in the event a

20 Respondent Company chooses to contest the Department's determination of

21 noncompliance.

22 3. Any Respondent Company who wishes to contest the Department's determination of

23 noncompliance will have twenty days from the date of receipt of the Department's

24 notice to submit a written request to the Department for an adjudicative hearing.

- 1 4. In lieu of requesting an adjudicative hearing, within twenty days from the date of
2 service of the notice of alleged noncompliance, any Respondent Company may submit
3 a written response contesting the alleged noncompliance for consideration by the
4 Department. The response must include that Respondent Company's waiver of the
5 right to an adjudicative hearing, may address the alleged noncompliance, and may
6 seek an alternative resolution to lifting the stay and imposing the stayed fine.
- 7 5. The scope and issues of the adjudicative hearing are limited solely to whether or not
8 any Respondent Company is in violation of the terms of the Act or this Consent Order.
- 9 6. At the conclusion of the hearing, the ALJ will issue an initial decision. Either party
10 may file a Petition for Review of that initial decision with the Director of the
11 Department.
- 12 7. DEFAULT: If any Respondent Company either does not timely request an
13 adjudicative hearing, or does not timely submit a written response contesting the
14 alleged noncompliance, the Department will impose the stayed fine and pursue
15 whatever other enforcement action it deems necessary to enforce the Act and Consent
16 Order.

17 **K. Investigation Fee.** It is AGREED that Respondent Companies shall pay to the
18 Department an investigation fee of \$1,000, in the form of a cashier's check made payable to the
19 "Washington State Treasurer," upon entry of this Consent Order.

20 **L. Change of Address.** It is AGREED that for the duration of the period this Consent Order
21 is in effect, unless otherwise agreed to in writing by the Department, Respondent Companies shall
22 provide the Department with a mailing address and telephone number at which Respondent
23 Companies can be contacted and Respondent Companies shall notify the Department in writing of
24 any changes to their mailing addresses or telephone numbers within fifteen days of any such change.

1 **M. Records Retention.** It is AGREED that Respondent Companies, their officers,
2 employees, and agents shall maintain records in compliance with the Act and provide the Director
3 with the location of the books, records and other information relating to each Respondent Company's
4 consumer loan company business, and the name, address and telephone number of the individual
5 responsible for maintenance of such records in compliance with the Act.

6 **N. Authority to Execute Order.** It is AGREED that the undersigned have represented and
7 warranted that they have the full power and right to execute this Consent Order on behalf of the
8 parties represented.

9 **O. Non-Compliance with Order.** It is AGREED that Respondent Companies understand
10 that failure to abide by the terms and conditions of this Consent Order may result in further legal
11 action by the Director. In the event of such legal action, Respondent Companies may be responsible
12 to reimburse the Director for the cost incurred in pursuing such action, including but not limited to,
13 attorney fees.

14 **P. Voluntarily Entered.** It is AGREED that Respondent Companies have voluntarily
15 entered into this Consent Order, which is effective when signed by the Director's designee.

16 **Q. Completely Read, Understood, and Agreed.** It is AGREED that Respondent
17 Companies have read this Consent Order in its entirety and fully understand and agree to all of the
18 same.

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1 **RESPONDENT COMPANIES:**

2 **McKinley Mortgage Company, LLC;**
3 **Alaska Financial Company III, LLC; and**
4 **McKinley Mortgage Co., LLC; by:**

5 /s/_____

Krista L. Freitag
Independent Manager and Monitor for
McKinley Mortgage Company, LLC;
Alaska Financial Company III, LLC; and
McKinley Mortgage Co., LLC

2/25/19_____

Date

8 **Approved for Entry:**

9 /s/_____

10 Joshua del Castillo
11 Attorney for Krista L. Freitag
Allen Matkins Leck Gamble Mallory & Natsis LLP

2/25/19_____

Date

12 **DO NOT WRITE BELOW THIS LINE**

13 THIS ORDER ENTERED THIS 6th DAY OF March, 2019.

15 /s/_____

16 **CHARLES E. CLARK**
17 Director
Division of Consumer Services
Department of Financial Institutions

18 Presented by:

19 /s/_____

20 **DREW STILLMAN**
Financial Legal Examiner

21 Approved by:

22 /s/_____

23 **STEVEN C. SHERMAN**
Enforcement Chief

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
Consumer Loan Act of Washington by:

5 McKinley Mortgage Company, LLC,
6 NMLS No. 206321; Alaska Financial Company
III, LLC; McKinley Mortgage Co., LLC; and
7 Tobias Preston, NMLS No. 207182;

8 Respondents.

No. C-18-2444-18-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO ENTER AN
ORDER TO CEASE AND DESIST, IMPOSE
FINE, COLLECT INVESTIGATION FEE,
and RECOVER COSTS AND EXPENSES

9 **INTRODUCTION**

10 Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial
11 Institutions of the State of Washington (Director) is responsible for the administration of chapter
12 31.04 RCW, the Consumer Loan Act (Act).¹ After having conducted an investigation pursuant to
13 RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the
14 Director, through her designee, Division of Consumer Services Director Charles E. Clark, institutes
15 this proceeding and finds as follows:

16 **I. FACTUAL ALLEGATIONS**

17 **1.1 Respondents.**

18 **A.** McKinley Mortgage Company, LLC (Respondent AK-MMC) is an Alaska-based limited
19 liability company that has never been licensed by the Department of Financial Institutions
20 of the State of Washington (Department) to conduct business as a consumer loan
21 company. Respondent AK-MMC has also done business under the name “Home and Note
22 Documents.”

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24 ¹ The Act was amended effective June 7, 2018. All citations to the Act herein are to the version effective prior to that date.

1 **B.** Alaska Financial Company III, LLC (Respondent AFC) is an Alaska-based limited
2 liability company that has never been licensed by the Department to conduct business as a
3 consumer loan company.

4 **C.** McKinley Mortgage Co., LLC (Respondent FL-MMC) is a Florida-based limited liability
5 company that has never been licensed by the Department to conduct business as a
6 consumer loan company. Respondent FL-MMC is the manager and sole member of
7 Respondent AFC.

8 **D.** Tobias Preston is the sole member of Respondent AK-MMC and Respondent FL-MMC,
9 and has never been licensed by the Department to conduct business as a consumer loan
10 company.

11 **1.2 Unlicensed Loan Servicing.** Since approximately September 2010, Respondents have acted
12 as residential mortgage loan servicers in Washington without first obtaining and maintaining a license
13 under the Act. Respondents have acted as residential mortgage loan servicers for at least 14 loans in
14 Washington.

15 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the
16 Act by Respondents continues to date.

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

18 **2.1 Unlicensed Loan Servicing.** Based on the Factual Allegations set forth in Section I above,
19 Respondents are in apparent violation of RCW 31.04.035 for engaging in the business of a consumer
20 loan company by servicing residential mortgage loans without first obtaining and maintaining a
21 license under the Act.

22 **III. AUTHORITY TO IMPOSE SANCTIONS**

23 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 31.04.093(5)(a), the
24 Director may issue orders directing a licensee, its employee, loan originator, or other person subject

1 to the Act to cease and desist from conducting business in a manner that is injurious to the public or
2 violates any provision of the Act.

3 **3.2 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of
4 up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or
5 any other person subject to the Act for any violation of the Act or failure to comply with any order or
6 subpoena issued by the Director under the Act.

7 **3.3 Authority to Charge Examination Fee and Investigation Fee.** Pursuant to RCW
8 31.04.145(3) and WAC 208-620-590, WAC 208-620-610(7), every licensee examined or investigated
9 by the Director or the Director's designee shall pay for the cost of the examination or investigation,
10 calculated at the rate of \$69.01 per staff hour devoted to the examination or investigation, and shall
11 pay travel costs if the licensee maintains its records outside the state.

12 **3.4 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director
13 may recover the state's costs and expenses for prosecuting violations of the Act.

14 **IV. NOTICE OF INTENT TO ENTER ORDER**

15 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,
16 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
17 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, RCW
18 34.04.202, and RCW 31.04.205. Therefore, it is the Director's intent to ORDER that:

19 **4.1** Respondents McKinley Mortgage Company, LLC; Alaska Financial Company III,
20 LLC; McKinley Mortgage Co., LLC; and Tobias Preston cease and desist from
engaging in conduct in violation of the Act, including any unlicensed conduct in
21 violation of RCW 31.04.035.

22 **4.2** Respondents McKinley Mortgage Company, LLC; Alaska Financial Company III,
23 LLC; McKinley Mortgage Co., LLC; and Tobias Preston jointly and severally pay a
fine. As of the date of this Statement of Charges, the fine totals \$10,000.

24 **4.3** Respondents McKinley Mortgage Company, LLC; Alaska Financial Company III,
LLC; McKinley Mortgage Co., LLC; and Tobias Preston jointly and severally pay an

1 investigation fee. As of the date of this Statement of Charges, the investigation fee
2 totals \$550.

3 **4.4** Respondents McKinley Mortgage Company, LLC; Alaska Financial Company III,
4 LLC; McKinley Mortgage Co., LLC; and Tobias Preston maintain records in
5 compliance with the Act and provide the Department with the location of the books,
6 records and other information relating to Respondents' consumer loan business, and the
7 name, address and telephone number of the individual responsible for maintenance of
8 such records in compliance with the Act.

9 **4.11** Respondents McKinley Mortgage Company, LLC; Alaska Financial Company III,
10 LLC; McKinley Mortgage Co., LLC; and Tobias Preston jointly and severally pay the
11 Department's costs and expenses for prosecuting violations of the Act in an amount to
12 be determined at hearing or by declaration with supporting documentation in event of
13 default by a Respondent.

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1 **V. AUTHORITY AND PROCEDURE**

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

9 Dated this 18th day of December, 2018.

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

15 Presented by:

16 /s/
17 DREW STILLMAN
18 Financial Legal Examiner

19 Approved by:

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