

ORDER SUMMARY – Case Number: C-18-2444

Name(s): Tobias Preston

Order Number: C-18-2444-19-FO01

Effective Date: 3/29/19

License Number: NMLS No. 207182
Or NMLS Identifier [U/L] _____

License Effect:

Not Apply Until:

Not Eligible Until:

Prohibition/Ban Until:

Investigation Costs	\$ 550		Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Fine	\$ 10,000	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	\$	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:

No.: C-18-2444-19-FO01

5 MCKINLEY MORTGAGE COMPANY, LLC,
NMLS NO. 206321; ALASKA FINANCIAL
6 COMPANY III, LLC; MCKINLEY
MORTGAGE CO., LLC; AND TOBIAS
7 PRESTON, NMLS NO. 207182;

FINAL ORDER RE:
TOBIAS PRESTON

8 Respondents.

9 I. DIRECTOR'S CONSIDERATION

10 A. Default. This matter has come before the Director of the Department of Financial
11 Institutions of the State of Washington (Director), through her designee, Consumer Services Division
12 Director Charles E. Clark (Director's designee), pursuant to RCW 34.05.440(1). On December 18,
13 2018, the Director, through the Director's designee, issued a Statement of Charges and Notice of
14 Intent to Enter an Order to Cease and Desist, Impose Fine, Collect Investigation Fee, and Recover
15 Costs and Expenses (Statement of Charges) against Tobias Preston (Respondent Preston). A copy of
16 the Statement of Charges is attached and incorporated into this order by this reference. The
17 Statement of Charges was accompanied by a cover letter initially dated December 19, 2018, a Notice
18 of Opportunity to Defend and Opportunity for Hearing, and a blank Application for Adjudicative
19 Hearing for Respondent Preston (collectively, accompanying documents).

20 On December 19, 2018, the Department attempted to serve Respondent Preston the Statement
21 of Charges and accompanying documents by First-Class mail and Federal Express overnight delivery
22 to an address on Hemsted Drive in Redding, California (the "Hemsted address"). On December 20,
23 2018, the documents sent by Federal Express overnight delivery were delivered. The documents sent

1 by First-Class mail were not returned to the Department by the United States Postal Service. While it
2 appears that the Department successfully served the other Respondents at the Hemsted address,
3 Respondent Preston may no longer have been associated with the address at the time of service.

4 On January 10, 2019, the Department attempted to serve Respondent Preston the Statement of
5 Charges and accompanying documents by First-Class mail and Federal Express overnight delivery to
6 an address on Bonnyview Road in Redding, California (the “Bonnyview address”). On January 15,
7 2019, the documents sent by Federal Express overnight delivery were delivered. The documents sent
8 by First-Class mail were not returned to the Department by the United States Postal Service. On
9 January 16, 2019, however, the documents sent by Federal Express overnight delivery were returned
10 to the Department. The label on the front of the Federal Express envelope listed the reason for the
11 return as “Address is correct/recipient no longer at this address.”

12 On February 22, 2019, after the prior service attempts on Respondent Preston, the Department
13 received confirmation from the Girdwood, Alaska Branch Office of the United States Post Office that
14 mail addressed to Respondent Preston was being delivered to P.O. Box 1015, Girdwood, Alaska (the
15 “Girdwood address”). The Department served the Statement of Charges and accompanying
16 documents on Respondent Preston by sending a package containing the documents to the Girdwood
17 address by First-Class mail on February 25, 2019. The documents sent via First-Class mail were not
18 returned to the Department by the United States Postal Service.

19 Respondent Preston did not request an adjudicative hearing within twenty calendar days after
20 the Department served the Notice of Opportunity to Defend and Opportunity for Hearing, as provided
21 for in WAC 208-08-050(2).

22 B. Record Presented. The record presented to the Director’s designee for his review and
23 for entry of a final decision included the following:

- 1 1. Statement of Charges, cover letter, Notice of Opportunity to Defend and
2 Opportunity for Hearing, and blank Application for Adjudicative Hearing for
3 Respondent Preston, with documentation for service.
- 4 2. Post Office Address Verification Request form completed by the Girdwood,
5 Alaska Branch Office of the United States Post Office received by the Department
6 on February 22, 2019.

7 C. Factual Findings and Grounds for Order. Pursuant to RCW 34.05.440(1), the
8 Director's designee hereby adopts the Statement of Charges, which is attached hereto.

9 II. FINAL ORDER

10 Based upon the foregoing, and the Director's designee having considered the record and being
11 otherwise fully advised, NOW, THEREFORE:

12 A. IT IS HEREBY ORDERED, That:

- 13 1. Respondent Tobias Preston cease and desist from engaging in conduct in violation
14 of chapter 31.04 RCW, the Consumer Loan Act.
- 15 2. Respondent Tobias Preston pay a fine of \$10,000.
- 16 3. Respondent Tobias Preston pay an investigation fee of \$550.

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

24 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.

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

4 D. Judicial Review. Respondent Preston 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 you do not comply with the terms of this order,
8 **including payment of any amounts owed within 30 days of receipt of this order**, the Department
9 may seek its enforcement by the Office of the Attorney General to include the collection of the fine
10 and fee imposed herein. The Department also may assign the amounts owed to a collection agency
11 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 29th day of March, 2019.

16 STATE OF WASHINGTON
17 DEPARTMENT OF FINANCIAL INSTITUTIONS

18
19 /s/
CHARLES E. CLARK
Director
Division of Consumer Services

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **DIVISION OF CONSUMER SERVICES**

4 IN THE MATTER OF DETERMINING
5 Whether there has been a violation of the
6 Consumer Loan Act of Washington by:

7 McKinley Mortgage Company, LLC,
8 NMLS No. 206321; Alaska Financial Company
9 III, LLC; McKinley Mortgage Co., LLC; and
10 Tobias Preston, NMLS No. 207182;

11 Respondents.

No. C-18-2444-18-SC01

12 **STATEMENT OF CHARGES and**
13 **NOTICE OF INTENT TO ENTER AN**
14 **ORDER TO CEASE AND DESIST, IMPOSE**
15 **FINE, COLLECT INVESTIGATION FEE,**
16 **and RECOVER COSTS AND EXPENSES**

17 **INTRODUCTION**

18 Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial
19 Institutions of the State of Washington (Director) is responsible for the administration of chapter
20 31.04 RCW, the Consumer Loan Act (Act).¹ After having conducted an investigation pursuant to
21 RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the
22 Director, through her designee, Division of Consumer Services Director Charles E. Clark, institutes
23 this proceeding and finds as follows:

24 **I. FACTUAL ALLEGATIONS**

1.1 Respondents.

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

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 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
21 engaging in conduct in violation of the Act, including any unlicensed conduct in
22 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
24 fine. As of the date of this Statement of Charges, the fine totals \$10,000.

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.

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

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