

COPY

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

Nationscapital Mortgage Corp., et al.,

Respondents.

DFI Case No. 97-083-C01

ENTRY OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND FINAL
ORDER

I. DIRECTOR'S CONSIDERATION

A. Review. This matter has come on before the Director of the Washington State Department of Financial Institutions (Director) pursuant to chapter 34.05 RCW for review of the Findings of Fact, Conclusions of Law, and Initial Order filed by Administrative Law Judge Elmer E. Canfield on January 18, 2002. This review is pursuant to the Petitions for Review of the Initial Order filed by the Respondents (Nations) and the State of Washington (State) on February 19, 2002.

B. Process. Nationscapital Mortgage Corp. (Nations) operated as a mortgage broker in the State of Washington for several years prior to May of 1998. Following operations of its predecessor GAMC, Nations held broker-operating authority in Washington beginning in May 1995.

Department of Financial Institutions (DFI) received complaints against Nations from Washington consumers. In June of 1997, DFI began an investigation of Nations.

On May 13, 1998, DFI issued Nations a Statement of Charges and Notice of Intention to Enter an Order (No. 97-083-C01). The Charges were retroactively amended on September 25, 1998. The Statement of Charges, including the Amended Charges, will be referred to as "Charges" for purposes of this order. As set out in the Charges, DFI seeks to

FINAL ORDER - 1

RECEIVED

JAN 29 2003

DEPT. OF FINANCIAL INSTITUTIONS

RECEIVED

JAN 29 2003

CONSUMER SERVICES DIVISION
DEPT OF FINANCIAL INSTITUTIONS
OLYMPIA WASHINGTON

revoke Nations' mortgage broker license, impose fines, restitution and other penalties against Nations and individual Respondents.

Respondents timely filed a request for an administrative hearing.

DFI subsequently entered into Consent Orders with two of the Respondents, Brad Chisick and Steven Willis, who are no longer parties to this proceeding.

Prehearing conferences were held before Administrative Law Judge Elmer E. Canfield (the ALJ) of the Office of Administrative Hearings on July 22, 1998, October 20, 1998, February 9, 1999, May 14, 1999 and August 11, 1999. These conferences were held by conference call from Olympia, Washington.

Forty days of hearings were held before Administrative Law Judge Elmer E. Canfield, of the Office of Administrative Hearings between the dates of January 31, 2000 and October 25, 2000. The hearings were held in Olympia, Washington; Tacoma, Washington; Seattle, Washington; and Vancouver, Washington.

The ALJ issued the Findings of Fact, Conclusions of Law, and Initial Order on January 18, 2002, and the parties filed Petitions for Review on February 19, 2002. The State filed its Reply to Respondent's Petition for Review, dated March 1, 2002, and the Respondents filed a Response to State's Petition for Review on February 25, 2002. On April 2, 2002, Acting Director Mark Thomson disqualified himself as the Reviewing Officer as a result of previous involvement with the investigation of Nationscapital, and appointed Dennis Dellwo as reviewing officer.

The Respondents filed a Motion and Memorandum to Disqualify Dennis Dellwo as Reviewing Officer on April 30, 2002. On June 20, 2002 the State filed their Response in Opposition to Respondents' Motion to Disqualify Dennis Dellwo as Reviewing Officer. On May 14, 2002, the Respondents filed a Request for Production of Documents to Mark Thomson. On July 18, 2002, Dennis A. Dellwo issued an Order on Motions denying Respondents' Motion to Disqualify Dennis Dellwo as Reviewing Officer and Respondents' request for leave to conduct discovery.

On August 5, 2002, the Respondents submitted a letter, signed by Gary Roberts, indicating he would be on vacation and requested that, prior to the receipt of Respondents'

Supplemental Factual Materials and Legal Memorandum, this decision not be published. No additional materials or legal memorandum has been received.

C. Record. The record considered by the undersigned includes: the Statement of Charges and Notice of Intention to Enter an Order (no. 97-083-C01); Amended Charges; Consent Orders; Respondents' Motions In Limine and Memorandum in Support and the State's Memorandum in Opposition; Statement of Charges; Redacted Statement of Charges and Notice of intention to Enter an Order; the Respondents' set of subpoenas for consumers; Respondents' Motion for production of Test Results From the State of Washington with an Affidavit of Attorney in Support of Motion; Department's Motion for a Protective Order re: test results and Mortgage Broker Examination together with Memorandum in Support; Motion of Steve Willis for Partial Summary Judgment; and Memorandum in Support of Motion; *Suboenas Duces Tecum* for 15 individuals from Respondent; State's Memorandum in Opposition to Motion for Summary Judgment of Kraus and Williams; Affidavit of Chuck Cross; State's Motion to Compel Nationscapital's Answer to the State's Discovery Requests; Affidavit in Support of Motion to Compel Discovery and Certificate of Compliance; State's Response to Motion For Protective Order Limiting Discovery, with Attachments A-D; Affidavit of Alice Blado and Chuck Cross In Opposition to Motion For Protective Order with Attachment A; Application for Judicative Hearing by Respondents; Notices of Pre-hearing Conferences; Respondent's Motion and Memorandum to Disqualify John Bley as Reviewing Officer; Verbatim Reports of Proceedings before Elmer E. Canfield, Administrative Law Judge both on tapes and transcribed; Motion for Protective Order Limiting Discovery; Declaration of Steven Tubbs Regarding Discovery; Respondents' Requests for Discovery; the Pre-hearing Conference Orders and Notices of five Pre-hearing Conferences; Order Denying Motions for Prehearing Orders; Notice of Deposition Upon Oral Examination of Scott Johnson and Steve Willis; Order Granting Department's Motion to Compel and Denying Appellants' Motion for Protective Order Limiting Discovery; Witness Lists for Department; Miscellaneous Notices and letters from the Court and the Parties; Findings of Fact, Conclusions of Law and Initial Order of the ALJ; Hearing Memorandum of Gary Roberts for Respondents; States Response to Respondent's Petition for Review; States' Petition for Review; Respondents'

Response to States Petition for Review; the documentary evidence admitted at the Hearing; and numerous other files and records in this matter necessary to evaluate both the Respondents' and the State's Petitions for Review.

D. Appearances. Gary Roberts, Attorney at Law, appeared as counsel for Nationscapital Mortgage Corp., Jamie Chisick, Michael Buff, Kevin Kraus and Darin Williams (Steven B. Tubbs had appeared as counsel for Nations, *et al.*, at earlier proceedings). Alice M. Blado, Assistant Attorney General, appeared for the Department of Financial Institutions (DFI)—also appearing for DFI were Richard A. McCartan, AAG, and Marlo DeLange, AAG. Respondent Scott Johnson appeared *pro se*. For the Petitions for Review, Gary Roberts appeared on behalf of the Respondents and Alice M. Blado on behalf of the State. Melanie DeLeon, AAG, appeared on behalf of Mark Thomson on Respondent's Motion to Disqualify Reviewing Officer.

E. Issues Raised in Petition for Review. After complete review of the above Record, the undersigned has considered the Respondents' and State's exceptions and disposed of them as follows:

1. The Respondents' petition for review

(a) Respondent Exceptions 1, 5, 26, 28, 29, 30, 31, 42, 44, 45, 50, 55, and 56: WAC 10-08-211(3), which was adopted by DFI in WAC 208-08-020, requires that a "petition for review shall specify the portions of the Initial Order to which exception is taken and shall refer to the evidence of the record which is relied upon to support the petition." These exceptions do not meet that standard and the Reviewing Officer will not address them.

(b) Respondent Exception 2: The Respondents contend there is no substantial evidence that GAMC or Nationscapital misled or misinformed DFI about their name change. Upon review, the undersigned finds that Finding of Fact 6 does not declare that GAMC or Nationscapital misled or misinformed DFI about their name change. Finding of Fact 6 cites to various portions of the record where Nationscapital requested assistance in processing its name change from GAMC to Nationscapital. This exception is without merit.

(c) Respondent Exception 3 and 24: The Respondents contend that there is no substantial evidence that Riverview Escrow Co. performed escrow services in Washington or that it was required to be licensed in Washington. This exception is without merit. Finding of Fact No. 7 does not state that Riverview Escrow Co. is required to be licensed. The finding simply states the undisputed facts that Nationscapital used Riverview's services and that Riverview did not hold a Washington license to operate as an escrow company in Washington. The Request For Admission Response by the Respondent, NO. 103, verifies that an affiliated business arrangement existed between Nations and Riverview Escrow Company, Inc., within the meaning of Regulation X of RESPA. This and the testimony in this case verify that Nations used Riverview's services in Washington. This is a correct finding.

(d) Respondent Exceptions 4, 6, 7 and 8: The Respondents except to Findings No. 13, 16, 17 and 18 contending that there is no substantial evidence that the documents DFI received from Willis constituted "manuals" or that those documents were used in whole or in part in the state of Washington. Nations further objects to the findings that suggest the telemarketing manual is unlawful or that Jamie Chisick supervised Kraus or Kraus supervised Scott Johnson. After review of the briefing, the testimony and related exhibits, the undersigned finds substantial evidence that reflects that the documents are manuals and were used in Washington by Nations' staff. The evidence is clear that Nations instructed its employees to use the manuals and the misleading techniques found therein. These exceptions are without merit.

(e) Respondent Exception 10: Nations excepts to Finding No. 20 and contends that there is no substantial evidence supporting those findings or that Jamie Chisick or other individual defendants knew of, participated in or approved any misrepresentations by Willis. Nations also excepts to generalized findings that are not tied to specific acts. Upon review of this exception, Finding of Fact No. 20, the record, and the parties' briefing, the undersigned finds there is substantial evidence supporting the statements found in Findings of Fact No. 20 and this exception is without merit.

(f) Respondent Exception 12: Nations objects to Finding No. 22 claiming there is no substantial evidence to support the finding and it is not probative of anything. Upon review

of this Finding Of Fact and review of the record, the undersigned finds that there is substantial evidence to support such finding and the evidence is probative of Jamie Chisick's knowledge of the existence of complaints from Washington State borrowers. This exception is without merit.

(g) Respondent Exception 13 and 14: Nations excepts to Finding of Fact No. 24 and contends that here and throughout the initial opinion, the findings are general and do not relate to each specific borrower for whom DFI contends there were violations. Further they object to the findings themselves as being inaccurate. A review of the record by the undersigned confirms that there is substantial evidence to support the findings. The facts are sufficiently specific and probative to provide the ALJ with facts necessary to enter the findings found in the Initial Order. These exceptions are without merit.

(h) Respondent Exception 15: Nations excepts to Finding No. 25 to the extent that it does not recognize that Nations' failure to produce records shortly after June 24, 1997 was due solely to DFI's refusal to enter into an agreement to protect the confidentiality of those records which required Nations to seek and obtain court protection. Upon review of the full record, the undersigned finds that Finding No. 25 is supported by substantial evidence, however, it is correct that Nations objected to the production of the records without an agreement to protect the confidentiality of those records. A protective order was eventually obtained through the courts. Finding of Fact No. 25 should be amended to reflect this additional information.

(i) Respondents' Exception 16: The Respondents object to Finding of Fact No. 31, contending that it does not recognize that DFI's institution of a unilateral temporary cease and desist order was an abuse of the department's power. Finding No. 31, however, is a statement of facts, listing what the DFI did and not a conclusion of law. The exception is without merit and is rejected.

(j) Respondents' Exception 17: The Respondents do not object to findings 32 and 35 but seek an additional finding which would declare that the Department never took action in Superior Court claiming that Nationscapital was in violation of the stay, that it was the court's intent that the parties work together to resolve problems identified by DFI and that DFI refused to meet with Nationscapital in good faith in an effort to resolve these problems.

The State contends these requested findings are irrelevant to the issues in this case and that the Respondents misconstrue the record. Upon review of the record, the undersigned finds the requested findings irrelevant to the issues in this case. This exception is without merit and rejected.

(k) Respondent Exception 18: Nations excepts to Finding No. 42 in that it is incomplete and misleading because it makes it appear that Nations was not cooperating with the investigation when there is no substantial evidence to support that conclusion. Nations points out that DFI was given prior notice that it was closing its doors in recognition of the Jewish holiday. The State has not responded to this exception. The Finding should be amended to reflect the fact that notice of closure for this period was provided to DFI.

(l) Respondent Exception 19: Nations excepts to Finding No. 43, contending that there is no substantial evidence for such a finding. Upon review of the record and briefing of the parties, the undersigned finds there is substantial evidence to support this finding and the exception is without merit.

(m) Respondent Exception 20: Nations excepts to Finding No. 45. Nations contends that there were no "missing" files. As loans were closed, the files were closed and sent to DFI. Upon review of the Finding and the record, the undersigned finds that No. 45 accurately reflects the situation on November 26, 1997. The word "missing" is used to indicate the records were not initially provided to DFI and were provided later. This exception is without merit.

(n) Respondent Exception 21: Nations excepts to Finding No. 47 because they believe it does not address concerns that Nations had about sending most of its experienced staff from California to Washington for lengthy testimony. They contend this would have prevented the company from doing its business. They also contend that there is no substantial evidence that Nations sought to "impose conditions" on DFI's directive. Upon review of the record, the undersigned finds that there is substantial evidence supporting Finding No. 47 and the exception is without merit.

(o) Respondent Exception 23: Nations excepts to Finding No. 55 in that they contend there is no substantial evidence that Chisick supervised Darin Williams or that on every day from May 30, 1995, Nations conducted business from an out of state location. However,

upon review of the Finding and review of the testimony and arguments, the undersigned finds substantial evidence supporting Finding of Fact No. 55 and finds this exception without merit.

(p) Respondent Exception 25: Nations excepts to Finding No. 102 and contends that Nations did not use the estimated cost analysis form in an effort to convince borrowers to go through it alone but rather used it to help educate borrowers on the advantage of paying more than the required payment each month. However, Finding No. 102 does not address the estimated cost analysis form. This form is addressed in Finding No. 103. The undersigned will treat Nations exception to Finding No. 102 as an exception to Finding No. 103.

Upon review of the testimony and briefing, the undersigned finds that there is substantial evidence supporting Finding No. 103, including that the form was used to convince prospective borrowers to go through with the loan. This exception is without merit.

(q) Respondent Exception 32: Nations excepts to Findings and Conclusions of Law No. 15 to the extent that the Initial Order concludes that Jamie Chisick dealt with Salick in any material way or that Chisick participated in or approved any false statement or unfair or deceptive loan practice in regard to Salick or Hines or that any of the acts or statements were known to or approved by Chisick. This exception is found without merit. The record, including the testimony and briefing, provide substantial evidence to support this conclusion.

(r) Respondent Exception 33: Nations excepts to all findings stated in Conclusions of Law Nos. 16, 17, 19 and 20. Nations contends there is no substantial evidence to support those findings and they are arbitrary and capricious. However, upon review of the record, the law, the testimony and briefing, the undersigned find that there is substantial evidence to support the findings and they are not arbitrary and capricious. The exception is without merit.

(s) Respondent Exception 34: Nations excepts to the Initial Order alleging that it contains a pattern of sweeping generalized conclusions about false statements or deceptive

practices. Nations does not cite any legal authority for this exception. A review of the Initial Order does not support their conclusion. This exception is without merit.

(t) Respondent Exception 35: Nations excepts to the fine of \$64,300 being imposed personally on Chisick for 643 violations when they contend there is no substantial evidence that he participated in or approved any alleged wrongful conduct. Upon review of the law and the complete record, the undersigned finds that there is substantial evidence that Chisick is liable for the 643 violations. Nations exception is premised upon an incorrect reading of the law and facts herein. The evidence in the record does show that Chisick was aware of the company's wrongful conduct. He can be held liable in this case where he has knowledge of the company's violations and hands on control over the company's management. (State v. Lundgren, 94 Wn. App 236, 971 P.2d 948 (1999)). The exception is without merit.

(u) Respondent Exception 36: Nations excepts to Conclusion No. 21. Nations contends that the fines stated in Conclusions No. 20 and 21 are duplicative. They again repeat the objections found in their exception 35. Upon review of these two Conclusions, the undersigned finds that RCW 19.146.0201(7), is the basis for the fines found in Conclusion No. 21 while different sections of that statute, RCW 19.146.0201(1,2 and 3), is the basis for the fines in Conclusion No. 20. The conclusions are not duplicative and the exception is without merit.

(v) Respondent Exception 37: Nations excepts to Conclusion No. 24 because they claim it misstates the law. The Undersigned, upon review of the law, finds that Conclusion No. 24 as modified herein (see 3(f), infra) is a correct statement of the law and the exception is without merit.

(w) Respondent Exception 38: Nations excepts to Conclusion No. 26 and contend the required disclosure would be false and misleading if Nations gave it. However, upon review of the law and briefing, the undersigned finds that RCW 19.146.030(2)(e) and (3) requires the refundable lock-in fees disclosure to be given. The Department developed a model refundable lock-in fee disclosure that all mortgage brokers were required to use unless they obtained the Department's approval to use an alternative form. Nations did not

provide the model disclosure and did not obtain the Department's approval to use an alternative form. The exception is without merit.

(x) Respondent Exception 39: Nations objects to Conclusion No. 31 and contends that it is not specific about which customers were not provided with the truth-in-lending and good faith estimate disclosures until the time of signing. However, upon review of the record, the undersigned finds there is substantial evidence supporting this conclusion. The Initial Order reflects the proper summary of facts. The record reflects substantial evidence of specific instances in which Nations did not provide the required disclosures. This Conclusion is appropriate and the exception is without merit.

(y) Respondent Exception 40: Nations excepts to Conclusion No. 42 and contend that such conclusion is based on the requirement that the broker make a written disclosure explaining the reason for the increase in fees. Nations contend the Department was not relying on this provision of law and must be held to this position. A review of the record demonstrates substantial evidence that Nations did not provide a written disclosure as required by law and was in violation of the law, RCW 19.146.030(4). Any claim that the Department was "not relying on this provision of law" does not tie the hands of the ALJ in the rendering of this decision. The Conclusion is a correct statement of the law and of the violation by Nations of that law. The exception is without merit.

(z) Respondent Exceptions 41: Nations excepts to Conclusion No. 45 and contend that it is arbitrary and capricious for the Department to find that Chisick is not personally liable for the failure to provide disclosures because he did not personally participate in or knowingly approve the disclosure violations (Conclusion No. 33) and then find that he is personally liable for restitution to borrowers for failure to make the same disclosures with respect to the good faith estimate of fees. Upon review of Conclusions of Law 33, 38, and 45 and review of the record, arguments of the parties, the undersigned finds that the Respondent's exception here has merit to the extent they assert that the two conclusions are inconsistent. The Department has similar objections. These Conclusions are in conflict with each other by finding personal liability for failure to provide one type of disclosure, but no personal liability for failure to provide a different disclosure. The undersigned finds that there is substantial evidence supporting the conclusion that Jamie Chisick should be subject to

personal liability for the disclosure violations referred to in Conclusion No. 33. The change requested by the Respondent is found without merit. See also State's exception to Conclusion No. 33. (3(h) infra)

(aa) Respondent Exception 43: Nations excepts again to Conclusion No. 45 claiming there are no findings specific to each consumer for whom restitution is ordered showing the basis on which personal liability for Chisick is found. Upon review of the Record and review of the Findings of Fact found herein, the undersigned finds substantial evidence that Jamie Chisick was personally involved in consumer complaints about fees, and that he participated in the wrongful conduct, or with knowledge approved of the conduct, and should be held jointly and severally liable for the restitution levied in Conclusion of Law No. 45. This exception is without merit.

(bb) Respondents' Exceptions 22, 44 and 45: The Respondents object to the admission of hearsay evidence, primarily evidence of the response to the questionnaires DFI sent to consumers. The Respondents however fail to demonstrate how the admission of hearsay evidence resulted in any erroneous Findings of Fact or Conclusions of Law. RCW 34.05.452(1) provides for the admission of Hearsay in an administrative proceeding. "Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs..." The questionnaires were not offered to prove the truth of the matter asserted in the survey, nor was this evidence used for purposes of determining the amount of restitution. The presiding officer chose to admit this evidence and upon review, the undersigned finds this was an appropriate exercise of discretion. This exception is rejected and found to be without merit.

(cc) Respondent Exception 46: Nations excepts to Conclusion No. 52 contending that there is no substantial evidence as to what days Nations conducted activities from an unlicensed location or that Nations did so every day for 978 days. Nations further objects to the continuance of the fine after the September hearing before Judge Berschauer because DFI was in bad faith to the extent that it refused to process and approve Nations' application for license of their other locations. The undersigned finds there is substantial evidence that Nations conducted business with Washington consumers from unlicensed

locations from February 19, 1995 through January 31, 1998. Nations has shown no legal argument supporting a requirement that there must be a showing of unlicensed activity occurring each day of the period designated. To require such a showing would make the States' burden of proof so onerous as to vitiate the statute's deterrent purpose by rendering it nearly impossible to demonstrate a continuing violation. Further, the claimed refusal to process and approve Nations' application for licensing of other locations does not change the effect of the violations. This exception is without merit.

(dd) Respondent Exception 47: Nations excepts to Conclusion No. 53 for the reason stated in their exception above and they further contend that the standard for imposing personal liability is misapplied. Conclusion No. 53 is based on substantial evidence and properly imposes personal liability on Jamie Chisick. This exception is without merit. See (cc) above.

(ee) Respondent Exception 48: Nations excepts to Conclusion No. 55 and contend that there is no substantial evidence to support the fine and that it punishes Nations for exercising its statutory and constitutional rights in violation of its right to counsel and first amendment and due process rights under the U.S. and Washington Constitutions. Furthermore, Nations contend that there are no findings of fact to support the conclusions. The Respondent does not explain how its right to counsel, and due process rights were violated, nor do they provide any legal authority in support of their contentions. However, after a review of the record and the arguments of the Respondent, the undersigned finds there is not sufficient evidence supporting the fine. The manner in which this fine was assessed is unclear and because of that the undersigned must find the exception has merit. This fine is eliminated and the order should be so modified.

(ff) Respondent Exception 49: Nations excepts to Conclusion No(s). 61 and 62 contending that there are no findings adequate to support the conclusion of a suspension or its length. Nations further contend that there are no standards adopted at this proceeding for imposition of or the length of suspensions. They contend that failure to provide standards is contrary to statute and violates constitutional due process guarantees. They further believe the suspensions should commence, if ordered, at the time Nations surrendered its license. The authority for suspension and its length is clear and is found

specifically at RCW 19.146.220(1)(2)(e) as well as other provisions of the Mortgage Broker Practices Act, Chapter 19.146 RCW. Upon review of the record, including the transcripts of the hearings, the undersigned finds substantial evidence supporting both the suspensions and their length. This exception is without merit.

(gg) Respondents' Exception 51: The Respondents object to Finding No. 62 claiming that there is no substantial evidence to support the finding that DFI's focus was for Nations to comply with DFI's request for records. The complained of portion is the last sentence of that Finding which reads, "DFI's focus was for Nations to comply with DFI requests for records." Upon review of Finding No. 62 and the record, this last sentence, while correct, is unnecessary here and should be eliminated from this Finding.

(hh) Respondents' Exceptions 53 and 54: The Respondents contend the hearings officer erred and abused his discretion in allowing Janet Irish and Steve Willis to testify when they were not on the Department's witness list and were added after the time required for disclosure of witnesses. Upon review of the Model Rules of Procedure, Chapter 10-08 WAC and the APA, Chapter 34.05 RCW, it is clear that the presiding officer can permit additional witnesses to be called by the parties or by himself. The presiding officer determined that Steve Willis was not a surprise witness and there was still an opportunity for Nations to depose him. The Court further found that the purpose of specifying dates for the parties to exchange witness lists was to avoid surprise and any additions to a witness list beyond that date were to be provided on an as-soon-as-possible basis. Janet Irish was allowed by the ALJ to testify after hearing arguments and determining that the parties would not be prejudiced. The Record and briefing reflects that the presiding officer acted within his authority and properly exercised his discretion to permit these witnesses to testify, and these exceptions are without merit.

(ii) Respondents' Exception 57: The Respondents contend the hearings officer erred in ordering restitution for Ihrig and any other person who had filed a complaint and had their complaint closed by the Department prior to June 24, 1997. The undersigned reviewed the record and determined that the DFI did not consider the Ihrig case closed and was seeking restitution. The ALJ heard the arguments of the parties and rejected the Respondent's objection. Upon review, the undersigned finds that Ihrig was not a closed

case and the restitution was properly assessed. Further, the Respondent does not specify who the other persons are or the portions of the Initial Order to which exception is taken. This exception is without merit.

(jj) Respondents' Exceptions 9, 11, 59 and 64: The Respondents object to the admission of any evidence of settlement agreements. The Respondents contend that all evidence of a settlement agreement is always inadmissible. ER 408 does in fact exclude evidence of settlement negotiations when offered to prove liability or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. However, such evidence is not required to be excluded when offered for another purpose. As the Washington State Court Rules' Official Comments state, this conclusion is consistent with previous Washington State law, which admitted evidence of compromise and offers of compromise when offered for some purpose other than liability. (Meisenholder Sec. 9.) See Matteson v. Ziebarth, 40 Wn.2d 286, 242 P.2d 1025 (1952) (admitted to prove lack of good faith where good faith in issue); Robinson v. Hill, 60 Wash. 615, 111 P. 871 (1910) (admitted to prove employer-employee relationship). The evidence of settlement agreements was not used to prove liability, invalidity of the claim, or amount. In the case before us, the information was used to demonstrate that Chisick was aware of consumer's allegations. I find the admission was appropriate and the exception without merit.

(kk) Respondent Exceptions 58, 60, 61, 62, 63, 65, 66, 67 and 68: Nations excepts to Findings 22 and 70 through 101, Borrower Testimony, contending there is no substantial evidence to support the findings and that they are misleading and incomplete. Upon review of the transcripts, including the testimony of each of the borrowers, and briefing, the undersigned finds substantial evidence to support these findings and the exceptions are without merit.

(ll) Respondent Exception 69: Nations excepts to the hearing officer's refusal to allow the testimony of Dr. Jacobsen for the reasons stated at the hearing. The witness was offered to testify about problems Mr. Willis had with certain drugs and alcohol and what effect that would have had on his capacity to do the things he testified he was doing on the job. The Doctor had not met or examined Mr. Willis, but had only reviewed Mr. Willis' testimony in

the record. The State objected to this testimony and offered State v. Israel, 91 Wn.App. 846 (1998) as dispositive. The Israel case is very similar because it involved the issue of whether to allow an expert to testify that a co-conspirator in a crime had a mental disorder. The court held that there was no tenable basis for admitting the testimony. Based on review of the record, the undersigned finds that there was no tenable basis in this case for allowing the testimony of Dr. Jacobsen. Nations offered a multitude of evidence relating to Willis' credibility, including references to an alcohol problem, inconsistent statements, and his criminal history. Nations was fully allowed to make its arguments relating to Mr. Willis' credibility without testimony from Dr. Jacobsen. Further, Nations has cited no authority supporting this exception. The hearing officer's refusal to allow the testimony was appropriate and the exception is without merit.

(mm) Respondents' Exception 27: The Respondents contend that the DFI does not have the authority to conduct its investigation of Nationscapital, stating that the Department is limited to investigating open complaints and may investigate and levy charges and seek restitution only for those persons who filed complaints and whose complaints were open on or after June 24, 1997. This was fully argued in a Motion in Limine filed prior to the hearing before ALJ Canfield. The objection was fully and properly considered and the Administrative Law Judge rejected the Respondents' arguments. The undersigned has reviewed these arguments together with the record and Chapter 19.146 RCW, as amended, and finds that the DFI has the necessary investigative authority and the Respondents' Exception is rejected.

(nn) Respondents' Exception 52: The Respondents contend the standard of proof for the suspension and imposition of fines is "clear and convincing evidence" because they deal with the subject of professional license revocation. A recent case, Nims v. Board of Registration, 113 Wn.App. 499, 505, 53 P.3d 52 (Aug. 2002) holds that Nguyen v. Dep't of Health, Med. Quality Ass. Commission, 144 Wn.2d 516, 29 P.3d 689 (2001) is the law of this state on the evidence standard for revoking a professional license. In Nims, the court held that a registered professional engineer is entitled to the clear, cogent, and convincing burden of persuasion. However, these cases did not address the standard of proof required for imposition of fines or restitution

RCW 34.05.464 gives the officer reviewing an initial order the same decision-making authority that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing. RCW 19.146.221 provides that the standard of proof is a preponderance of the evidence. The evidence supporting the imposition of fines or restitution certainly met this standard. Moreover, my review of the record herein reveals that even if the standard of proof for suspension and the imposition of fines and the ordering of restitution was the clear and convincing standard, the undersigned finds that the evidence herein is overwhelming, much of it undisputed, and more than sufficient to meet a clear and convincing standard of proof. The order entered is appropriate.

2. The Respondent's Objectin to State's Petition for Review:

The Respondents object to the State's Petition for Review of the Initial Order, contending that it was not filed in accordance with the directions of the presiding officer, to wit, it was not filed in care of Deborah Bortner, Securities Administrator, at the address provided in the Notice of Further Appeal Rights on page 75 of the Initial Order.

In regards to filing of a petition for review, the APA in RCW 34.05.464 (1)(b) provides that review of an initial order is commenced when " a party to the proceedings files a petition for administrative review of the initial order." RCW 34.05.010(6) provides that "Filing' of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head." DFI does not have a rule designating a place for receipt of official documents.

The Initial Order required a petition for review to be filed with the "Director of Financial Institutions, c/o Deborah Bortner, Securities Administrator, 210 - 11th Avenue SW, Room 300, Olympia, WA 98504 (PO Box 9033, Olympia, WA 98507-9033). The State sent their petition for review to Mark Thomson, Acting Director, DFI, PO Box 41200, Olympia, WA 98504-1200. Regardless of which address is used, the end result is that the acting director would receive the petition.

Upon review of the record and law involving service, the undersigned believes the State substantially complied with the statutes and the Initial Order. The State mailed the

Petition directly to the acting director instead of to the director in care of someone else. Substantial compliance is defined as "actual compliance in respect to the substance essential to every reasonable objective of a statute." Petta v. Department of Labor and Industries, 68 Wash. App. 406, 409, 842 P.2d 1006 (1992). In re Saltis, 94 Wash. 2d 889, 621 P.2d 716 (1980) held there was substantial compliance where a statute required a petition to be served on the director of the Department of Labor & Industries, but the petition was actually delivered to the department (not directly to the director). The court found substantial compliance with the statute because there was actual compliance with the substance of the statutory requirement. (Although this case was based on the prior administrative procedure act, the undersigned believes it is appropriate to apply the reasoning in the case to the service issue in this case.) The undersigned finds that the State's filing of their Petition for Review was in substantial compliance with the statute and the directions in the Initial Order.

3. The State's petition for review

- (a) State's Exception to Finding of Fact No. 3:** The State contends the third sentence of this Finding contains an incorrect statement because Scott Johnson does not work for DFI as a 'field rep.' out of the Nations Bellevue Office. This is in fact an error and should be corrected. The word "Nations" should replace the word "DFI" in this sentence.
- (b) State's Exception to Finding of Fact No. 6:** The State requests that certain language be added to No. 6. This language gives the date DFI issued an interim license to GAMC and the details of GAMC's application for a license. The Respondents object to the language, contending that there is no substantial evidence in the record concerning the application. Upon review of the record, the undersigned finds substantial evidence in the record for the findings suggested by the State and the language should be added.
- (c) State's Exceptions to Findings of Fact No. 71, 78, 81, 86, 92, 93, 95, 96, 98 and 100:** The State asks that each of these findings be amended to read that the borrowers were not informed that Jamie Chisick had an ownership interest in Riverview Escrow. This language would replace the existing statement that erroneously finds the borrowers were

not told Nations had an ownership interest in Riverview Escrow. The Respondents have not objected to this addition and such change in these Findings is appropriate.

(d) State's Exception to Conclusion of Law No. 10: The State seeks the addition of language obtained from a 1999 State Court of Appeals decision and a 1975 U. S. Supreme Court decision. Upon review of State v. Lundgren, 94 Wn. App 236, 971 P.2d 948 (1999), the undersigned believes the following language adequately states that case's conclusions and should be added to Conclusion of Law No. 10: "It has also been held that a corporate officer can be held liable if the officer has knowledge of the company's violations and hands on control over the company's management."

(e) State's Exception to Conclusion of Law No. 11: The State contends that Conclusion of Law No. 11 erroneously concludes that Jamie Chisick should not be held individually liable for violations of RCW 19.146.060(3) (regarding a mortgage broker's obligation to maintain its books and records in the state of Washington). While there is reference in Conclusion of Law No. 53 to Jamie Chisick's responsibility to make himself reasonably informed of the law, his company operations and whether his company was operating in compliance with the law, this does not make Conclusion of Law No. 11 incorrect. The requested change to No. 11 is denied.

(f) State's Exception to Conclusion of Law No. 24 and 30: The State disagrees with these Conclusions of Law to the extent they conclude Nations "received an application" thereby triggering an obligation to provide disclosures "at the time its employee obtained the borrower's signature on the application". The State contends that these conclusions are not consistent with federal regulations and the Department's longstanding administrative interpretation. Upon review of the law and arguments of the parties, the undersigned finds that the existing Conclusions of Law 24 and 30 are incorrect and the first sentence of Conclusion of Law No. 24 should be modified to read:

Nations was in receipt of an application for purposes of RCW 19.146.030 when Nations accepted from the borrower in person, or by mail, telephone or some other electronic medium, adequate information to complete the standard FNMA 1003 application form.

Conclusion of Law No. 30 should be modified by striking the fourth sentence regarding Nations' obligation to provide disclosures.

(g) State's Exception to Conclusions of Law No. 32 and 33: This Exception seeks the correction of a typographical error. This error should be corrected. The Statutory reference found in Conclusions of Law No. 32 and the last sentence of No. 33 should be corrected to read RCW 19.146.0201(6).

(h) State's Exception to Conclusion of Law No. 33: The State disagrees with the conclusion in No. 33 that Jamie Chisick should not be personally assessed a fine for Nations' disclosure violations. The State contends that as President of the company, Jamie Chisick was ultimately responsible for all aspects of Nations' operations. The State also argues that Conclusion of Law No. 33 is in direct conflict with Conclusion of Law No. 38. After review of the record and briefing of the parties, the undersigned finds this exception to have merit. There is substantial evidence Jamie Chisick was ultimately responsible for all aspects of Nations' operations. For the same reasons given in Conclusion No. 38, Jamie Chisick should be held individually liable for fines for disclosure violations under RCW 19.146.0201(6). Conclusion of Law No. 33 should be modified to include personal liability of Jamie Chisick for a fine of \$64,300.00 for violation of RCW 19.146.0201(6).

(i) State's Exception to Conclusion of Law No. 65: The State asks for a change in this Conclusion's language to state that Nations' application for a branch license for its Portland and California locations is denied. ALJ Canfield found this issue was moot based on the fact that Nations has ceased doing business as a mortgage broker in Washington and surrendered its mortgage broker license. The ALJ's finding that this issue is moot is correct since RCW 19.146.265 only authorizes a "licensed mortgage broker" to apply for branch licenses. Additionally, on page 5 of Respondents' Reply to State of Washington's Petition for Review, the respondents state: "For the record, Nations withdraws its application for branch licenses." The issue is in fact moot as reflected in Conclusion of Law No. 65.

(j) State's Exception to Initial Order No. 6: The State seeks the amendment of Order No. 6 to reflect the assessment of additional fines against Jamie Chisick consistent with their request for modification of Conclusions of Law No. 11 and 33. Modification to Conclusion of Law No. 33 was granted and therefore, the amendment of No. 6 is necessary to that extent.

(k) State's Request for Additional Initial Order No. 12: This request for an additional Order No. 12 is unnecessary due to the rejection of the State's request for changes to Conclusion of Law No. 65 and is denied.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed and considered the briefs of the parties and the files and records herein, and disposed of the exceptions raised by the Respondents and the State, the undersigned adopts and incorporates by reference the Findings of Fact and Conclusions of Law as found by the Administrative Law Judge Elmer E. Canfield in the Initial Order dated January 18, 2002, with only the following modifications:

1. The third sentence of Finding of Fact No. 3 is revised to read: Scott Johnson worked for Nations as a "field rep." out of the Nations Bellevue office.

2. The following language is added at the beginning of Finding of Fact No. 6:

DFI issued an interim mortgage broker license to General Acceptance Mortgage Corp. (GAMC) on November 14, 1994. Exhibit 2. Jamie Chisick was identified on GAMC's application as the President of GAMC. Jamie Chisick signed the "Signature and Oath of Applicant" portion of the application stating that RCW 19.146 and the regulations promulgated thereunder had been reviewed by the applicant's principals and responsible parties and that all such employees and independent contractors would be made aware of such laws and regulations and changes enacted thereafter.

3. Finding No. 25 is amended to include the addition of the following language before the last two sentences of that finding:

Nations objected to the production of the records without an agreement to protect the confidentiality of those records. Such protection of confidentiality was obtained through the courts.

4. Finding No. 42 is amended to include the following language at the end of said paragraph:

Nations gave DFI notice that it was closing its doors in recognition of the Jewish holiday occurring during that period of time.

5. Finding No. 62 is amended to eliminate the last sentence contained therein.
6. Findings of Fact No. 71, 78, 81, 86, 92, 93, 95, 96, 98 and 100 are modified to correct the existing language to reflect that such customer was not advised that Jamie Chisick had an ownership interest in Riverview Escrow. The Initial Order incorrectly states in the first or second paragraph of each Finding that such customer was not informed that "Nations" had an ownership interest in Riverview Escrow.
7. Conclusion of Law No. 10 is amended by adding the following sentence to the end of that paragraph:

It has also been held that a corporate officer can be held liable if the officer has knowledge of the company's violations and hands on control over the company's management. State v. Lundgren, 94 Wn. App 236, 971 P.2d 948 (1999).

8. Conclusion of Law No. 24 is modified to replace the first sentence with the following:

Nations was in receipt of an application for purposes of RCW 19.146.030 when Nations accepted from the borrower in person, or by mail, telephone or some other electronic medium, adequate information to complete the standard FNMA 1003 application form.

9. Conclusion of Law No. 30 is modified by striking the fourth sentence regarding Nations' obligation to provide disclosures.

10. Conclusions of Law Nos. 32 and 33 are amended to correct a statutory cite. The correct cite is: RCW 19.146.0201(6).

11. Conclusion of Law No. 33 is modified by replacing the entire conclusion with the following:

This Tribunal will uphold the assessment of disclosure fines of \$64,300.00 under RCW 19.146.0201(6) personally against Jamie Chisick. Jamie Chisick was aware of the disclosure violations and was responsible for the overall operation of Nations.

12. Conclusion of Law No. 55 is amended by striking the last sentence and replacing it with the following:

However, because the evidence is not clear as to how the DFI calculated the amount of the fine they are seeking, a fine pursuant to RCW 19.146.235 will not be imposed.

III. FINAL ORDER

Based on the foregoing, and having considered the entire record and being otherwise fully advised, **NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. Nations' license to hold itself out as a mortgage broker to Washington consumers is revoked.
2. Nations shall pay fines as follows:
 - a. \$64,300.00 for violations of RCW 19.146.0201(1), (2) & (3).
 - b. \$64,300.00 for violations of RCW 19.146.0201(6).
 - c. \$29,300.00 for violations of RCW 19.146.0201(7).
 - d. \$9,100.00 for violations of RCW 19.146.0201(8) pre-July 21, 1997.
 - e. \$37,100.00 for violations of RCW 19.146.0201(8).
 - f. \$37,100.00 for violations of RCW 19.146.0201(10).
 - g. \$20,775.00 for violations of RCW 19.146.050 as follows:
 - i. \$14,025.00 for 187 days late (Ex. 61).
 - ii. \$1,950.00 for 26 commingling/failures to deposit (Ex. 68).
 - iii. \$4,800.00 for 64 commingling or conversion (Ex. 69).
 - h. \$97,800.00 for violations of RCW 19.146.060(3).
 - i. \$97,800.00 for violations of RCW 19.146.265.
3. Nations shall pay an investigation fee of \$29,040.75.
4. Nations shall maintain its books and records in compliance with RCW 19.146.060 and all applicable rules.

5. Nations and Jamie Chisick, jointly and severally, shall pay restitution in the amount of \$712,527.19 to 120 consumers as set out in Exhibit No. 66—Prater was removed since Nations has already paid restitution to Prater. This restitution shall be paid only once by Nations and/or Jamie Chisick.

6. Jamie Chisick shall pay fines as follows:

- a. \$64,300.00 for violations of RCW 19.146.0201(1), (2) & (3).
- b. \$64,300.00 for violations of RCW 19.146.0201(6).
- c. \$29,300.00 for violations of RCW 19.146.0201(7).
- d. \$37,100.00 for violations of RCW 19.146.0201(10).
- e. \$97,800.00 for violations of RCW 19.146.265.

7. Jamie Chisick is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of twenty (20) years.

8. Michael Buff is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

9. Scott Johnson is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

10. Kevin Kraus is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

11. Darin Williams is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

IV. NOTICE OF FURTHER APPEAL RIGHTS

A. Reconsideration. Pursuant to RCW 34.05.470, Parties have the right to file a petition for reconsideration stating the specific grounds upon which relief is requested. The request

must be filed in the Office of the Director of the Department of Financial Institutions, P.O. Box 41200, Olympia, WA 98504-1200, within ten (10) days of service of the Final Order upon the Parties. The petition for reconsideration shall not stay the effectiveness of this Order nor is a petition for reconsideration a prerequisite for seeking judicial review of this matter.

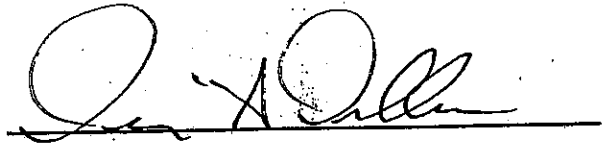
A timely petition for reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the Department does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

B. Stay of Order. The Reviewing Officer has determined not to consider a petition to stay the effectiveness of this order. Any such request should be made in connection with a petition for judicial review made under chapter 34.05 RCW and RCW 34.05.550.

C. Judicial Review. Under the provisions of chapter 34.05 RCW, the parties have the right to petition the superior court for judicial review of this agency action. The requirements for filing a petition for judicial review are contained in RCW 34.05.510 and the sections following.

D. Service. For purposes of filing a Petition for Reconsideration or Judicial Review, service upon Parties is deemed completed upon deposit of this order in the U.S. Mail. An affidavit of service is attached hereto.

Dated this 27 day of January 2003 at Spokane, Washington.



Dennis A. Dellwo

Reviewing Officer

CERTIFICATE OF SERVICE

I, **Dennis A. Dellwo**, **HEREBY CERTIFY** that I caused a true and exact copy of the foregoing **Entry of Findings of Fact, Conclusions of Law and Final Order** to be mailed, postage prepaid, to the below listed parties on this 27 day of January, 2003:

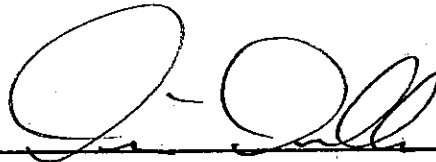
Nationscapital Mortgage Corp.
1045 W Natella Ave, Suite 200
Orange CA 92867

Alice M Blado, AAG
Office of the Attorney General
PO Box 40109
Olympia WA 98504-0109

Gary Roberts, Esq.
1211 SW 5th Ave, Suite 1700
Portland OR 97204-3795

Chuck Cross
Dept of Financial Institutions
PO Box 41200
Olympia WA 98504-1200

Scott Johnson
1104 Kirkland Ave, #7
Kirkland WA 98033



Dennis A. Dellwo, Attorney at Law