

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2003-1166

**Office of Financial and Insurance
Services,**

Agency No. 03-363-MB

Petitioner

**Agency: Office of Financial &
Insurance Services**

v

**Select Mortgage L.L.C., Kal F. Khalil
(aka Kalil Khalil), and Tariq Hamed
(aka Tariq Hamad),
Respondents**

Case Type: Prohibition

_____ /

**Issued and entered
this 23rd day of October, 2003
by C. David Jones
Administrative Law Judge**

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On September 4, 2003, the Commissioner of the Office of Financial and Insurance Services issued and entered a Notice of Intent to Issue Order of Prohibition Pursuant to MCL 445.1668(a) (Notice of Intent). The Notice of Intent stated in relevant part, A...it is the intention of the Commissioner to prohibit Respondents Kal Khalil and Tariq Hamed from being employed by an agent of, or control person of a licensee or registrant under the MBLSLA or a licensee or registrant under a financial licensing act.® Also on September 4, 2003, the Commissioner issued and entered an Order Referring Notice of Intent to Issue Order of Prohibition for Hearing (Order Referring for Hearing). On or about September 8, 2003, the Bureau of Hearings prepared a Notice of Hearing for October 10,

2003, and apparently provided it to OFIS for service. On September 18, 2003, the Bureau of Hearings mailed Respondents an Amended Notice of Hearing. The Notice indicated the hearing would be held on October 10, 2003, beginning at 10:00 a.m. at 611 West Ottawa Street, Lansing, Michigan.

On September 9, 2003, three Proofs of Personal Service were received by the Bureau of Hearings indicating that on September 18, 2003, the three Respondents were served in care of Attorney Mo Abdrabboh, the Notice of Hearing, the Order Referring for Hearing, and the Notice of Intent.

Also on September 19, 2003, a letter was received from Attorney Mo Abdrabboh, indicating he was authorized to accept service for Respondents and did accept service of the Notice of Hearing and the Notice of Intent.

On September 26, 2003, the undersigned Administrative Law Judge signed 11 subpoenas at Petitioner-s request.

On October 10, 2003, the hearing commenced as scheduled. Petitioner was represented by David W. Silver, Assistant Attorney General. Respondents did not appear in person or by counsel.

Assistant Attorney General Silver indicated he had communicated with Attorney Abdrabboh who indicated he represented Respondents for the limited purpose of accepting service but would not appear at hearing. Attorney Abdrabboh further indicated the following spelling of names: Kalil Khalil and Tariq Hamad.

Assistant Attorney General Silver moved for the entry of a default and the issuance of an Order of Prohibition.

Assistant Attorney General Silver submitted a copy of the September 4, 2003, Final Order to Cease and Desist.

ISSUES

The OFIS licenses mortgage brokers and lenders pursuant to the Mortgage Brokers, Lenders and Servicers Licensing Act, MCL 445.1651 *et seq.* (Act). A hearing on the Notice of Intent to Prohibit is held pursuant to MCL 445.1668a(Act Section 18a).

The following issues are present in this case:

1. Should a default be entered for failure to appear?
2. Did Respondents consent to entry of an Order of Prohibition by failing to appear at hearing?
3. Did Respondents engage in a pattern of fraud, deceit and material misrepresentation in connection with mortgage broker and lender activities in violation of MCL 445.1672(a) and (b)(Act Section 22a and b)?

FINDINGS OF FACT

1. Respondents failed to appear at hearing in this case after proper service of notice, and no adjournment was granted.
2. Respondents engaged in a pattern of fraud, deceit and material misrepresentation in connection with mortgage broker and lender activities in violation of Act Section 22(a) and (b) as set forth in detail in the Notice of Intent to Issue Order of Prohibition.

CONCLUSIONS OF LAW

1. Default

MCL 24.272(1); APA Section 72(1), provides as follows:

(1) If a party fails to appear in a contested case, after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

MCL 24.278(2); APA Section 78(2) provides in relevant part as follows:

(2) Except as otherwise provided by law, disposition may be made of a contested case by . . . default . . .

The Respondents failed to appear in this case after proper service of notice, and no adjournment was granted. An order of default, therefore, should be granted.

2. Consent to Entry of Order of Prohibition

MCL 445.668(a)(2); Act Section 1880(2) provides as follows:

A notice issued under subsection 1 shall contain a statement of the facts supporting the prohibition and, except as provided under subsection 7, set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

Respondents did not appear at the hearing. Therefore, they should be considered to have consented to the issuance of the Order in accordance with the Notice.

3. Grounds for Order: Fraud

Petitioner claimed as grounds for the Order, a violation by Respondents of MCL 445.1672(a) and (b), Act Sections 22(a) and (b). These provide as follows:

It is a violation of this act for a licensee or registrant to do any

of the following: a. fail to conduct the business in accordance with the law, this act or a rule promulgated or an order issued under this act; b. engage in fraud, deceit or material misrepresentation in connection with any transaction governed by this act...

Pursuant to MCL 445.1668a(1), Act Section 18a(1), a prerequisite for issuance of an order of prohibition is engaging in fraud. The fraud alleged here is a violation of Act Section 22(a) and (b). As noted above, Respondents failed to appear at hearing, a default should be entered, and they should be considered to have consented to the issuance of the requested Order. Since Respondents have consented to the issuance of the Order, they have consented to a finding of fraud, a prerequisite to the Order.

Therefore, Respondents should be considered to have committed fraud in violation of Act Section 22(a) and (b), as set forth in detail in the Notice of Intent to Issue an Order of Prohibition.

PROPOSED DECISION AND ORDER

Based on the above Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge recommends the following decision:

1. Respondents defaulted and an Order of Default should be entered.
2. Since Respondents failed to appear at hearing, they have consented to the issuance of an Order of Prohibition in accordance with the Notice.
3. Respondents committed fraud in violation of Act Section 22(a) and (b).
4. An Order of Prohibition should be entered in accordance with the

Notice.

EXCEPTIONS

Any exceptions to this Proposal for Decision should be filed in writing with the Office of Financial and Insurance Services, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan, within 20 days of the issuance of this Proposal for Decision.

C. David Jones
Administrative Law Judge