

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Department of Insurance and Financial Services

Docket No. 22-062068

Case No. 22-1072-CF

Petitioner,

v

Fidelity Funding Co., Inc.,

Respondent.

ISSUED AND ENTERED

**on May 4, 2023
by Sarah Wohlford, Esq.
Senior Deputy Director**

FINAL DECISION

I. INTRODUCTION

On December 22, 2022, the Department of Insurance and Financial Services (“Petitioner”) issued a complaint (the “Complaint”) alleging violations by Fidelity Funding Co., Inc. (“Respondent”) of the Mortgage Brokers, Lenders, and Servicers Licensing Act (“MBLSLA”), MCL 445.1651 *et seq.*, and the Secondary Mortgage Loan Act (“SMLA”), MCL 493.51 *et seq.*, while engaging in the mortgage loan business in Michigan. The matter was referred to the Michigan Office of Administrative Hearings and Rules (“MOAHR”).

On December 28, 2022, MOAHR issued a notice of hearing that scheduled a telephone hearing to be held at 9:00 a.m. on February 21, 2023. The telephone hearing commenced as scheduled with Petitioner’s attorney and two other persons appearing on behalf of Petitioner. Neither Respondent nor an attorney on Respondent’s behalf appeared at the hearing. Administrative Law Judge Lindsay Wilson waited for 45 minutes after the hearing was scheduled to commence before proceeding in Respondent’s absence. Petitioner then moved for entry of a default against Respondent pursuant to section 72 of the Administrative Procedures Act of 1969 (the “APA”), MCL 24.272, section 78 of the APA, MCL 24.278, and Rule 792.10134 of the Michigan Administrative Code.

On March 6, 2023, Administrative Law Judge Wilson issued a proposal for decision (“PFD”). Based on the PFD’s findings of fact and conclusions of law, Administrative Law Judge Wilson recommended that the Director issue a final order finding Respondent in violation of section 21(1) and (3) of the MBLSLA, MCL 445.1671(1) and (3); section 22(a) of the MBLSLA, MCL 445.1672(a); and section 6a(13) of the SMLA, MCL

493.56a(13); and imposing an appropriate penalty or sanction under section 29(2) and (3) of the MBLSLA, MCL 445.1679(2) and (3).

Neither party filed exceptions to the PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. See, e.g., *Attorney General v. Public Service Comm'n*, 136 Mich App 52 (1984); see also MCL 24.281. The PFD's findings of fact are in accordance with the preponderance of the evidence, and the PFD's conclusions of law, with the exception noted below, are supported by reasoned opinion. For these reasons, the PFD is adopted as set forth below. The Director hereby issues this Final Decision and **REVOKES** Respondent's license as a mortgage broker and lender and orders Respondent to pay a civil fine of \$3,000.00 pursuant to section 29(2) and (3) of the MBLSLA, MCL 445.1679(2) and (3).

The PFD omitted reference to any relief under the SMLA despite all of the following: (1) Petitioner unambiguously requested such relief, including revocation of licensure, in the Complaint; (2) the PFD contained a finding of fact that Respondent knew or should have known that section 6a(13) of the SMLA, MCL 493.56a(13), states that the Director may require the registrant to file special reports as the Director considers reasonably necessary for proper supervision; (3) the PFD contained a conclusion of the law that Petitioner has met its burden of proving, by a preponderance of the evidence, the facts alleged in the Complaint; and (4) the PFD contained a recommendation that the Director issue a final order finding Respondent in violation of section 6a(13) of the SMLA, MCL 493.56a(13). Accordingly, this Final Decision adopts the PFD in full with the exception of the apparently inadvertent omission of reference to relief under the SMLA.

Because Respondent knew or should have known that section 6a(13) of the SMLA, MCL 493.56a(13), permits the Director to require a licensee to file special reports as the Director considers reasonably necessary for proper supervision, but Respondent nevertheless failed to timely file seven quarterly mortgage call reports between May 2019 and December 2020, Respondent has either knowingly or without the exercise of due care to prevent it violated the SMLA such that revocation of licensure is appropriate under Section 11(2)(d) of the SMLA, MCL 493.61(2)(d). The Director accordingly hereby **REVOKES** Respondent's license as a mortgage broker and lender under Section 11(2)(d) of the SMLA, MCL 493.61(2)(d).

II. FINDINGS OF FACT

The findings of fact in the PFD are in accordance with the preponderance of the evidence and are adopted in full and made part of this Final Decision. The facts are summarized below:

1. Petitioner conducted an examination of Respondent to assess the adequacy of management and review records to determine compliance with findings of previous examinations and applicable state and federal laws. Petitioner's examination report alleged that Respondent had violated the MBLSLA and SMLA.
2. Respondent was unable to provide a complete list of its Michigan mortgage loan applications taken within the past two years, rendering Petitioner unable to verify whether the correct activity was reported in Respondent's mortgage call reports with respect to the number of loans closed within a calendar year.

3. Respondent provided Petitioner a list that did not contain all the preferred fields of information.
4. As a licensee, Respondent knew or should have known that Section 6a(13) of the SMLA, MCL 493.56a(13), states that the Director may require a licensee or registrant to file special reports as the Director considers reasonably necessary for the proper supervision of licensees or registrants under the SMLA.
5. Petitioner could not determine Respondent's compliance with Section 6 of the Consumer Mortgage Protection Act, MCL 445.1636, and Section 1026.19(e) of Regulation Z, 12 CFR 1026.19(e), because Respondent's dates on initial loan documents conflicted for mortgage loan applicants.
6. Respondent failed to timely file seven quarterly mortgage call reports between May 2019 and December 2020.
7. All of Respondent's activity reported for 2019 was reported as brokered loans. Petitioner's examination of the loan files, however, revealed that Respondent was the lender of record. Those loans accordingly must be reported in mortgage call reports as either closed-retail or closed-wholesale.
8. Respondent failed to provide consumers with closing disclosures that contained all required and/or accurate information.
9. Respondent failed to maintain records to show all compensation paid to its loan originators under the written terms and agreements.
10. Respondent was previously cited for many of the above-referenced violations in a 2019 examination.
11. On or about June 7, 2021, Petitioner issued to Respondent a notice of opportunity to show compliance ("NOSC") along with a statement of factual allegations that contained allegations that Respondent had violated sections 21(1), 21(3) and 22(a) of the MBLSLA, MCL 445.1671(1) and (3) and 445.1672(a). The NOSC also set forth applicable laws and penalties.
12. On or about August 23, 2021, Petitioner issued to Respondent an administrative complaint and order for hearing. Respondent responded but failed to show compliance with the MBLSLA and the SMLA.

III. CONCLUSIONS OF LAW

The conclusions of law in the PFD are adopted in full with the exception noted above, made a part of this Final Decision, and restated herein as follows:

1. Respondent violated section 21(1) of the MBLSLA, MCL 445.1671(1), by failing to maintain books, accounts, records, and documents of the business to enable the Director to determine whether the business is conducted pursuant to the MBLSLA and the rules promulgated thereunder.
2. Respondent violated Section 21(3) of the MBLSLA, MCL 445.1671(3), and Section 6a(13) of the SMLA, MCL 493.56a(13), by failing to timely file seven quarterly mortgage call reports between May 2019 and December 2020.

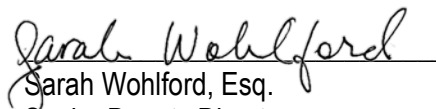
3. By failing to timely file seven quarterly mortgage call reports between May 2019 and December 2020, Respondent, either knowingly or without the exercise of due care to prevent it, violated the SMLA such that revocation of licensure is appropriate under Section 11(2)(d) of the SMLA, MCL 493.61(2)(d).
4. Respondent violated Section 21(3) of the MBLSLA, MCL 445.1671(3), by failing to accurately report activity on its mortgage call reports.
5. Respondent violated Section 22(a) of the MBLSLA, MCL 445.1672(a), by failing to provide consumers with closing disclosures that contained all required and/or accurate information as Respondent was required to do by Section 1026.19(f) and 1026.38 of Regulation Z, 12 CFR 1026.19(f) and 12 CFR 1026.38.
6. Respondent violated Section 22(a) of the MBLSLA, MCL 445.1672(a), by failing to maintain records to show all compensation paid to its loan originators as required by Section 1026.25(c)(2) of Regulation Z, 12 CFR 1026.25(c)(2).
7. A preponderance of the evidence establishes that Respondent violated Sections 21(1), 21(3), and 22(a) of the MBLSLA, MCL 445.1671(1) and (3) and 445.1672(a). Respondent therefore is subject to disciplinary action under Section 29(2)-(3) of the MBLSLA, MCL 445.1679(2)-(3).
8. A preponderance of the evidence establishes that Respondent, either knowingly or without the exercise of due care, violated Section 6a(13) of the SMLA, MCL 493.56a(13). Respondent therefore is subject to disciplinary action under section 11(2)(d) of the SMLA, MCL 493.61(2)(d).

IV. ORDER

Therefore, it is **ORDERED** that that:

- A. The PFD is adopted and made part of this Final Decision.
- B. In accordance with Section 29(2) of the MBLSLA, MCL 445.1679(2), Respondent's license as a mortgage broker and lender under the MBLSLA is hereby **REVOKED**.
- C. In accordance with Section 29(2) and (3) of the MBLSLA, MCL 445.1679(2)-(3), Respondent shall pay a civil penalty of \$3,000.00.
- D. In accordance with Section 11(2)(d) of the SMLA, MCL 493.61(2)(d), Respondent's license as a mortgage broker and lender under the SMLA is hereby **REVOKED**.

Anita G. Fox, Director
For the Director:


Sarah Wohlford, Esq.
Senior Deputy Director

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

Docket No.: 22-062068

**Department of Insurance and Financial
Services,
Petitioner**

Case No.: 22-1072-CF

v

**Agency: Department of
Insurance and
Financial Services**

**Fidelity Funding Co., Inc.,
Respondent**

Case Type: Consumer Finance

Filing Type: Appeal

**Issued and entered
this 6th day of March 2023
by: Lindsay Wilson
Administrative Law Judge**

PROPOSAL FOR DECISION

Procedural History

This proceeding is held under the authority of the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA), MCL 445.1651 *et seq.*, and the Secondary Mortgage Loan Act (SMLA), MCL 493.51 *et seq.*, the Administrative Procedures Act, MCL 24.201 *et seq.* (APA), and the Michigan Office of Administrative Hearings and Rules (MOAHR) hearing rules, Mich Admin Code, R 792.10101 *et seq.* (MOAHR Rules).

On December 22, 2022, the Department of Insurance and Financial Services (Petitioner) issued a Complaint alleging violations by Fidelity Funding Co., Inc. (Respondent) of the MBLSLA and the SMLA, while engaging in the mortgage loan business in Michigan.

On December 28, 2022, this matter was referred to MOAHR to schedule a contested case hearing.

On December 28, 2022, MOAHR issued a Notice of Hearing scheduling a telephone hearing for 9:00 a.m. on February 21, 2023.

On February 21, 2023, the telephone hearing commenced as scheduled. Petitioner was represented by William R. Peattie, Attorney for Petitioner. Alex Dornberg and Holly Diehl also appeared on behalf of Petitioner. Neither Respondent, nor an attorney, appeared on Respondent's behalf at the hearing. The undersigned waited until 9:45 a.m. before proceeding in Respondent's absence. Petitioner moved for entry of a default against Respondent pursuant to Sections 72 and 78 of the APA and MOAHR Rule R 792.10134(1).

After determining that Respondent was properly served notice of the hearing, the undersigned permitted Petitioner to proceed in Respondent's absence. The hearing proceeded pursuant to Section 72 of the APA. A default was granted on behalf of Petitioner pursuant to Section 78 of the APA and R 792.10134. These statutory provisions and rules state as follows:

Sec. 72(1) of the APA states:

- (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 24.272(1).

Section 78(2) of the APA states:

- (2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties. MCL 24.278(2).

Mich Admin Code, R 792.10134 states:

- (1) If a party fails to attend or participate in a scheduled proceeding after a properly served notice, the administrative law judge may conduct the proceedings without participation of the absent party. The administrative law judge may issue a default order or other dispositive order which shall state the grounds for the order.
- (2) Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to

serve the interests of justice and the orderly and prompt conduct of proceedings.

Because of the default, the factual and legal allegations contained in the Complaint dated December 22, 2022, are deemed true and proven. No witnesses or exhibits were presented by Petitioner. The record was closed at the conclusion of the February 21, 2023 hearing.

Under the MOAHR Rules, specifically Rule 792.10134(2), Respondent may file a motion to vacate the default as follows:

Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings.

Issue and Applicable Law

The issue here is whether Respondent has violated the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA), MCL 445.1651 *et seq.* and the Secondary Mortgage Loan Act (SMLA), MCL 493.51¹ *et seq.*, and is subject to penalties/sanctions under the MBLSLA and the SMLA, as alleged in Petitioner's December 22, 2022 Complaint. The relevant statutes and regulations referenced in the Complaint provide as follows:

Section 21 of the MBLSLA, MCL 445.1671, provides in relevant part:

Sec. 21.

- (1) A licensee or registrant shall maintain books, accounts, records, and documents of the business, as prescribed by the commissioner, conducted under the license or registration to enable the commissioner to determine whether the business of the licensee or registrant is conducted pursuant to this act and the rules promulgated under this act. The preservation of records by reproduction pursuant to the records media act constitutes compliance with this section. If the books, accounts, records, and documents are not made available in

¹ This is the issue as stated on the Notice of Hearing.

this state, the licensee or registrant shall pay the reasonable travel, lodging, and meal expenses of the examiner as provided in section 8.

* * *

- (3) On or before a date to be determined by the commissioner, a licensee or registrant shall annually file with the commissioner a report giving information, as required by the commissioner, concerning the business and operations of the licensee or registrant under this act during the immediately preceding calendar year. In addition, the commissioner may require a licensee or registrant to file special reports as the commissioner considers reasonably necessary for the proper supervision of licensees or registrants under this act. Reports required pursuant to this section shall be in the form prescribed by the commissioner, signed, and affirmed. A person who willfully and knowingly subscribes and affirms a false statement in a report required pursuant to this subsection is guilty of a felony, punishable by imprisonment for not more than 15 years.

Section 22 of the MBLSLA, MCL 445.1672, provides in relevant part:

Sec. 22.

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 law, this act, or a rule promulgated or order issued under this act. * * *

Section 29 of the MBLSLA, MCL 445.1679, provides in relevant part:

Sec. 29.

* * *

- (2) Subject to subsections (4) and (5), if the commissioner finds that a licensee or registrant, has violated, or directly or indirectly counseled, aided, or abetted in a violation, of this act or the rules promulgated under this act, the commissioner may do 1 or more of the following:

- (a) Assess a civil fine against the licensee or registrant or a person who controls the licensee or registrant of not more than \$3,000.00 for each violation, except that the licensee or registrant or the person shall not be fined more than \$30,000.00 for a transaction resulting in more than 1 violation, plus the costs of investigation.
 - (b) Suspend or revoke a license or registration or refuse to issue a license or renew a license or registration.
 - (c) Require the licensee or registrant or a person who controls the licensee or registrant to make restitution to each injured individual, if the commissioner finds that the violation of this act or a rule promulgated under this act resulted in an injury to 1 or more individuals.
- (3) A civil fine assessed under subsection (2) may be sued for and recovered by and in the name of the commissioner and may be collected and enforced by summary proceedings by the attorney general. Each individual injured by a violation of this act or a rule is a separate violation. In determining under subsection (2) the amount of a fine, whether to suspend or revoke a license or registration, whether to refuse to issue or renew a license, or the amount of restitution, the commissioner shall consider the extent to which the violation was a knowing and willful violation, the extent of the injury suffered because of the violation, the corrective action taken by the licensee or registrant to ensure that the violation will not be repeated, and the record of the licensee or registrant in complying with this act. Any proceedings under this subsection are subject to the procedures of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. * * *

Section 6a of the SMLA, MCL 493.56a, provides in relevant part:

Sec. 6a.

* * *

- (13) On or before a date to be determined by the commissioner, a licensee or registrant shall annually file with the commissioner a report giving information, as required by the commissioner, concerning the business and operations of the licensee or registrant under this act

during the immediately preceding calendar year. In addition, the commissioner may require a licensee or registrant to file special reports as the commissioner considers reasonably necessary for the proper supervision of licensees or registrants under this act. Reports required under this section shall be in the form prescribed by the commissioner, signed, and affirmed. A person who willfully and knowingly subscribes and affirms a false statement in a report required under this subsection is guilty of a felony, punishable by imprisonment for not more than 15 years.

Section 6 of the Consumer Mortgage Protection Act, MCL 445.1636, provides:

Sec.6.

- (1) Subject to subsection (2), at the time a person applies for a mortgage loan, the lender shall provide the applicant with a copy of the special information booklet described in 12 CFR 1024.6, issued under the authority of the real estate settlement procedures act of 1974, Public Law 93-533.
- (2) If the federal government repeals or amends 12 CFR 1024.6 or otherwise ceases publication of the special information booklet described in subsection (1), the department of insurance and financial services shall prepare a document that describes the rights of borrowers in mortgage loan transactions; annually review the document to ensure the accuracy of any telephone numbers, Internet website addresses, or other information included in the document; and make the document available to lenders and the public. If the document described in this subsection is available to a lender under this subsection at the time a person applies for a mortgage loan, the lender shall provide the applicant with a copy of that document.

* * *

Section 1026.19 of Regulation Z, 12 CFR Part 1026.19, provides in relevant part:

(e) *Mortgage loans - early disclosures* –

(1) *Provision of disclosures* –

(i) *Creditor.* In a closed-end consumer credit transaction secured by real property or a cooperative unit, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with good faith estimates of the disclosures in § 1026.37.

(ii) *Mortgage broker.*

(A) If a mortgage broker receives a consumer's application, either the creditor or the mortgage broker shall provide a consumer with the disclosures required under paragraph (e)(1)(i) of this section in accordance with paragraph (e)(1)(iii) of this section. If the mortgage broker provides the required disclosures, the mortgage broker shall comply with all relevant requirements of this paragraph (e). The creditor shall ensure that such disclosures are provided in accordance with all requirements of this paragraph (e). Disclosures provided by a mortgage broker in accordance with the requirements of this paragraph (e) satisfy the creditor's obligation under this paragraph (e).

* * *

(f) *Mortgage loans- final disclosures –*

(1) *Provision of disclosures –*

(i) *Scope.* In a transaction subject to paragraph (e)(1)(i) of this section, the creditor shall provide the consumer with the disclosures required under § 1026.38 reflecting the actual terms of the transaction.

* * *

Section 1026.25 of Regulation Z, 12 CFR Part 1026.25, provides, in pertinent part:

(c) *Records related to certain requirements for mortgage loans.*

* * *

(2) *Records related to requirements for loan originator compensation.* Notwithstanding paragraph (a) of this section, for transactions subject to § 1026.36 of this part:

- (i) A creditor shall maintain records sufficient to evidence all compensation it pays to a loan originator, as defined in § 1026.36(a)(1), and the compensation agreement that governs those payments for three years after the date of payment.
- (ii) A loan originator organization, as defined in § 1026.36(a)(1)(iii), shall maintain records sufficient to evidence all compensation it receives from a creditor, a consumer, or another person; all compensation it pays to any individual loan originator, as defined in § 1026.36(a)(1)(ii); and the compensation agreement that governs each such receipt or payment, for three years after the date of each such receipt or payment.

Section 1026.38 of Regulation Z, 12 CFR Part 1026.38, provides in part that:

For each transaction subject to § 1026.19(f), the creditor shall disclose the information in this section:

* * *

(f) *Closing cost details; loan costs.* Under the master heading “Closing Cost Details” with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all loan costs associated with the transaction, listed in a table under the heading “Loan Costs.” The table shall contain the items and amounts listed under four subheadings, described in paragraphs (f)(1) through (5) of this section.

* * *

(2) *Services borrower did not shop for.* Under the subheading “Services Borrower Did Not Shop For” and in the applicable columns as described in paragraph (f) of this section, an itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer did not shop in accordance with §

1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker, the name of the person ultimately receiving the payment for each such amount, and the total of all such itemized amounts that are designated borrower-paid at or before closing. Items that were disclosed pursuant to § 1026.37(f)(3) must be disclosed under this paragraph (f)(2) if the consumer was provided a written list of settlement service providers under § 1026.19(e)(1)(vi)(C) and the consumer selected a settlement service provider contained on that written list.

* * *

(p) *Other disclosures.* Under the heading “Other Disclosures”:

* * *

- (3) *Liability after foreclosure.* A brief statement of whether, and the conditions under which, the consumer may remain responsible for any deficiency after foreclosure under applicable State law, a brief statement that certain protections may be lost if the consumer refinances or incurs additional debt on the property, and a statement that the consumer should consult an attorney for additional information, under the subheading “Liability after Foreclosure.”

* * *

Findings of Fact

Based upon the record in this matter, including the pleadings taken as accurate because of the default, the following findings of fact are established:

1. At all relevant times, Fidelity Funding Co., Inc. (Respondent) was licensed as a mortgage broker and lender under the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA), 1987 PA 173, as amended, MCL 445.1651 *et seq.* and registered as a mortgage broker and lender under the Secondary Mortgage Loan Act (SMLA), 125 PA 1981, as amended, MCL 493.51 *et seq.*
2. In the exercise of its statutory authority and responsibility, the Department of Insurance and Financial Services (Petitioner) conducted an examination of Respondent, pursuant to Section 11(2)(c) of the MBLSLA, MCL 445.1661(2)(c) and Section 6b(2)(b) of the SMLA, MCL 493.56b(2)(b). The purpose of the

examination was to assess the adequacy of management and review records to determine compliance with findings of previous examinations and applicable state and federal laws.

3. On February 4, 2021, Petitioner issued an Examination Report to Respondent along with a copy of the examiner's conclusions and findings of violations. The Examination Report contained allegations that Respondent violated the MBLSLA and SMLA and set forth the applicable laws.
4. As a licensee, Respondent knew or should have known that Section 21(1) of the MBLSLA, MCL 445.1671(1), states that a licensee or registrant shall maintain books, accounts, records, and documents of the business, as prescribed by the Director, conducted under the license or registration to enable the Director to determine whether the business of the licensee or registrant is conducted pursuant to this act and the rules promulgated under this act.
5. Contrary to the requirements of Section 21(1) of the MBLSLA, MCL 445.1671(1), Respondent was unable to provide a complete list of its Michigan mortgage loan applications taken within the past two years. Therefore, Petitioner was unable to verify if the correct activity was reported on Respondent's Mortgage Call Reports (MCRs) with respect to the number of loans closed within a calendar year, as shown below

| Year | MCR | Application Log |
|-------------------|------------|------------------------|
| 2019 | 147 | Unknown |
| 2020 (through Q3) | 151 | Unknown |

Additionally, the list provided by Respondent did not contain all the preferred fields of information. Specifically, Respondent failed to include loan originator NMLS ID; processor name or entity name; application date; date closed; property address; property type; and lien position. A listing of mortgage loan applications should contain the following information:

- a. Loan originator name
- b. Loan originator NMLSR ID#
- c. Processor name (individual)
- d. Processing entity (if applicable)
- e. Applicant name
- f. Loan number
- g. Application date
- h. Date closed (if applicable)

- i. Status of application (closed, withdrawn, denied, in process, or rescinded)
 - j. Property address (including street address and city)
 - k. Property type (primary residence, secondary residence, investment)
 - l. Loan amount
 - m. Rate type (fixed, adjustable)
 - n. High cost or higher-priced loan (if applicable)
 - o. Lien position (first, second)
 - p. Loan purpose (purchase, refinance, reverse, reverse purchase)
 - q. Loan program (conventional, FHA, VA, HELOC, etc.)
 - r. Branch office (if applicable)
 - s. Lender or record, the entity to whom the note was initially payable
 - t. Funder (if different than lender of record)
 - u. Broker of record (if loan was brokered to lender)
 - v. Compensation source (lender paid/borrower paid)
 - w. For reverse mortgage origination, also include the following:
 - Principal limit
 - FHA case # assigned date
 - Product type (HECM Saver, HECM Standard, Proprietary)
 - Repairs after closing (Y/N)
6. Contrary to the requirements of Section 21(1) of the MBLSLA, MCL 445.1671(1), the dates on initial loan documents were conflicting for mortgage loan applicants, preventing Petitioner from determining compliance with one or more laws, including Section 6 of the Consumer Mortgage Protection Act and Section 1026.19(e) of Regulation Z, as shown below:

| Applicant | Loan ID # | Subject Property Address | Conflicting Documents and Dates |
|------------------|------------------|---------------------------------|--|
| AP | [REDACTED] | [REDACTED] | 1003 application 09/04/2020; Intent to Proceed 08/31/2020; Initial Loan Estimate 08/31/2020 |

7. As a licensee, Respondent knew or should have known that Section 21(3) of the MBLSLA, MCL 445.1671(3), states that the Director may require a licensee or registrant to file special reports as the Director considers reasonably necessary for the proper supervision of licensees or registrants under this act.
8. As a licensee, Respondent knew or should have known that Section 6a(13) of the SMLA, MCL 493.56a(13), states that the Director may require a licensee or

registrant to file special reports as the Director considers reasonably necessary for the proper supervision of licensees or registrants under this act.

9. Respondent violated Section 21(3) of the MBLSLA, MCL 445.1671(3) and Section 6a(13) of the SMLA, MCL 493.56a(13), by failing to timely file seven (7) quarterly Mortgage Call Reports, (MCRs) between May 2019 and December 2020, as shown below:

| Call Report Quarter | Due Date | Date Filed |
|---------------------|------------|------------|
| 2019 Q1 | 05/15/2019 | 12/20/2019 |
| 2019 Q2 | 08/14/2019 | 12/20/2019 |
| 2019 Q3 | 11/14/2019 | 12/20/2019 |
| 2019 Q4 | 02/12/2020 | 11/12/2020 |
| 2020 Q1 | 05/15/2020 | 11/12/2020 |
| 2020 Q2 | 08/14/2020 | 11/16/2020 |
| 2020 Q3 | 11/14/2020 | 11/29/2020 |

10. Respondent violated Section 21(3) of the MBLSLA, MCL 445.1671(3) by failing to accurately report activity on its quarterly MCRs. All activity reported for 2019 (Q1, Q2, Q3 and Q4) and 2020 (Q1, Q2 and Q3) was reported as brokered loans. However, during the exam, loan files reviewed disclosed Respondent as the lender of record. Those loans must be reported as either closed-retail or closed-wholesale on the MCRs.
11. As a licensee, Respondent knew or should have known that Section 22(a) of the MBLSLA, MCL 445.1672(a), states that it is a violation of the MBLSLA for a licensee to fail to conduct the business in accordance with law, this act, or a rule promulgated or order issued under this act.
12. Respondent violated Section 22(a) of the MBLSLA, MCL 445.1672(a), by failing to provide consumers with Closing Disclosures (CDs) that contained all required and/or accurate information, as required by Section 1026.19(f), and 1026.38 of Regulation Z, as shown below:

| Borrower | Loan ID # | Closing Date | CD Date | Missing/Inaccurate Information |
|----------|------------|--------------|------------|---|
| YK | [REDACTED] | 02/04/2020 | 01/31/2020 | (f)(2) Borrower selected Reputation First as title agency, but Respondent failed to move the title charges into |

| | | | | |
|----|--|------------|------------|--|
| | | | | Block B from Block C on the CD. |
| RR | | 06/03/2020 | 06/03/2020 | (f)(2) Listed the third-party processing fee in the wrong block; \$795 fee was paid to Processing Unlimited LLC and should be listed in Block B. (p)(3) Wrong selection made for Liability after Foreclosure. |

13. Respondent violated Section 22(a) of the MBLSLA, MCL 445.1672(a), by failing to maintain records to show all compensation paid to its loan originators, as required by Section 1026.25(c)(2) of Regulation Z.
14. Respondent failed to maintain records to show all compensation paid to its loan originators. The written compensation agreements for [REDACTED], [REDACTED], [REDACTED], and [REDACTED] state, in part, loan originators will receive "a per file of proceeds from the loan less \$800 for office use." The agreements for [REDACTED] and [REDACTED] also include a multiplier of .9235. The written compensation agreement for [REDACTED] states, in part, loan originator will receive "a per file of proceeds from the loan less \$1200 for office use." However, the compensation records provided were not sufficient in showing payments made to loan originators under the written terms and agreements. Additionally, Respondent did not provide a written compensation agreement for [REDACTED], who is licensed and sponsored by Respondent.
15. Respondent was cited for many of the same violations, as cited above, in a 2019 Examination.
16. On January 22, 2020, Petitioner issued an Order Accepting Stipulation and Requiring Compliance and Payment of Fine and Stipulation to Entry of Order Requiring Compliance and Payment of Civil Fine (Order) against Respondent.

Respondent violated the Order by failing to implement the required corrective actions or comply with the provisions of the Order and the MBLSLA and SMLA.

17. On or about June 7, 2021, Petitioner issued a Notice of Opportunity to Show Compliance (NOSC) to Respondent along with a Statement of Factual Allegations, pursuant to the provisions of the Michigan Administrative Procedures Act (APA), 1969 PA 306, as amended, MCL 24.201 *et seq.* The NOSC contained allegations that Respondent violated Section 21(1), 21(3), and 22(a) of the MBLSLA, MCL 445.1671(1) and (3), 445.1672(a), and Section 6a(13) of the SMLA, MCL 493.56a(13), and set forth applicable laws and penalties. Respondent failed to respond to the NOSC.
18. On or about August 23, 2021, Petitioner issued an Administrative Complaint and Order for Hearing to Respondent. The Statement of Factual Allegations contained the same violations as the NOSC. Respondent responded but failed to show compliance with the MBLSLA and the SMLA.
19. Based upon the actions listed above, Respondent has committed acts that provide justification for the Director to order the payment of a civil fine, the refund of any overcharges, that restitution be made to cover losses, damages or other harm attributed to Respondent's violation or violations of the MBLSLA and/or the SMLA, and/or other licensing sanctions, including revocation of licensure.

Conclusions of Law

Petitioner bears the burden of proving, by a preponderance of evidence, that Respondent violated the MBLSLA and SMLA as alleged in the Complaint. As the Michigan Supreme Court has stated, "[p]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence." *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985). A preponderance of evidence is evidence which is of a greater weight or more convincing than evidence offered in opposition to it. It is simply that evidence which outweighs the evidence offered to oppose it. *Martucci v Detroit Commissioner of Police*, 322 Mich 270; 33 NW2d 789 (1948).

Additionally, the principles that govern judicial proceedings also apply to administrative hearings. 8 *Callaghan's Michigan Pleading and Practice 2nd ed.*, Section 60.48, p 230. A default having been granted against Respondent, the factual and legal allegations set forth in the Complaint are taken as true and proven. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true and proven. *Smith v Lansing School Dist*, 428 Mich 248; 406 NW2d 825 (1987).

By virtue of the default, Petitioner has met its burden of proving, by a preponderance of the evidence, the facts alleged in the December 22, 2022 Complaint.

A preponderance of the evidence establishes that Respondent violated Section 21(1), 21(3), and 22(a) of the MBLSLA, MCL 445.1671(1) and (3), 445.1672(a), and Section 6a(13) of the SMLA, MCL 493.56a(13), and is therefore subject to disciplinary action under Section 29(2) and 29(3) of the MBLSLA, MCL 445.1679(2) and (3).

Proposed Decision

Based on the above Findings of Fact and Conclusions of Law, the Tribunal proposes that the Director issue a Final Order finding Respondent in violation of MCL 445.1671(1) and (3), MCL 445.1672(a), and MCL 493.56a(13), and impose an appropriate penalty or sanction under MCL 445.1679(2) and (3).



Lindsay Wilson
Administrative Law Judge

Exceptions

In accordance with MCL 24.281 and Mich Admin Code, R 792.10132, a party may file Exceptions to this Proposal for Decision (PFD) within 21 days after the PFD is issued. An opposing party may file a Response to Exceptions within 14 days after exceptions are filed. Exceptions/Responses shall include the case name and docket number and be sent by e-mail (preferred) to: MOAHR-GA@michigan.gov, by regular mail to: MOAHR-General Adjudication, P.O. Box 30695, Lansing, MI 48909, or by fax to: 517-335-7535. Also, a copy of Exceptions/Responses must be sent by e-mail to: swinsonr@michigan.gov or by regular mail to: Department of Insurance and Financial Services, Office of General Counsel–Attn: Hearings Coordinator Randie Swinson, P.O. Box 30220, Lansing, Michigan, 48909. A copy of any Exceptions/Responses must be timely sent to all other parties and attorneys of record in this matter.