

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Insurance and Financial Services

Office of Financial and Insurance Regulation¹
Petitioner

v

Marc King
Respondent

Case No. 12-887-MB
Docket No. 12-001451-OFIR

Issued and entered
this 5th day of June 2013
by Randall S. Gregg
Special Deputy Director

FINAL DECISION
AND
ORDER OF PROHIBITION

I. PROCEDURAL BACKGROUND

On August 27, 2012, Senior Deputy Commissioner Stephen R. Hilker issued an Order Referring Complaint for Hearing in this case. The Order set forth detailed allegations that Marc King ("Respondent") had violated provisions of the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA) (MCL 445.1651, *et seq.*). A hearing was held on December 10, 2012.

The ALJ issued a Proposal for Decision on April 26, 2013 and an Amended Proposal for Decision on May 2, 2013. The May 2 Proposal for Decision supersedes the April 26 Proposal for Decision. References to the Proposal for Decision or "PFD" are to the May 2 Proposal for Decision.

On May 21, 2013, Respondent Marc King submitted a document requesting "a further investigation." The document is not addressed to any particular agency or person and was apparently sent initially to the Michigan Administrative Hearing System. The Respondent claims that his business, Complete Mortgage Corporation, was provided with fictitious bank account information by _____ who is identified in the PFD as a person who brought mortgage business to the Respondent. In his May 21 document, Respondent claims that he was defrauded by _____ was not a witness at the hearing and was not subpoenaed by either party.

1. On March 18, 2013, the Governor, by Executive Order 2013-1, transferred the authority, powers, duties, functions, and responsibilities of the Commissioner of Financial and Insurance Regulation to the Director of the Department of Insurance and Financial Services (the Director). The Director has the authority to issue final decisions in administrative hearings such as the present case.

The document does not state any exceptions to specific findings in the PFD but rather attempts to introduce new evidence in this case. It cannot be accepted into the hearing record since neither the document or its contents were offered at hearing, through a witness capable of authenticating the facts asserted and subject to cross examination.

II. FINDINGS OF FACT

The findings of fact set forth in the PFD are adopted. The PFD is attached and made part of this Final Decision.

III. CONCLUSIONS OF LAW

Section 18a of the MBLSLA, MCL 445.1668a, includes the following provisions:

- (1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee or registrant under this act or a licensee or registrant under a financial licensing act. For purposes of this section, "fraud" shall include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.
- (2) 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.
- (3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act.

The conclusions of law in the PFD are properly reasoned and are grounded in the findings of fact. Those conclusions are:

- In processing two mortgage loan applications, Respondent suppressed or misrepresented material facts that he was required to disclose.

- Respondent knew that two verification of deposit documents submitted to the lender as part of the loan applications contained falsified information and fraudulent signatures.
- Respondent did not notify the lender of payments made between the seller and the borrower when he became aware of them.
- Respondent's actions induced the lender to make loan decisions, to the lender's or a third party's detriment.

The Respondent's conduct constitutes fraud as that term is used in section 18a of the MBLSLA.

IV. ORDER

In accordance with section 18a of the MBLSLA it is ordered that the Respondent is prohibited 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.

R. Kevin Clinton
Director

For the Director:

Randall S. Gregg
Special Deputy Commissioner

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OFIR/OGC

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No. 12-001451-OFIR

Office of Financial and Insurance
Regulation,
Petitioner

Agency No. 12-887-MB

Agency: Department of Financial &
Insurance Services

v
Marc King,
Respondent

Case Type: OFIR/OFIS

Filing Type: Appeal

Issued and entered
this 2nd day of May 2013
by Lauren G. Van Steel
Administrative Law Judge

AMENDED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Attorneys Marlon F. Roberts and William Y. Kim appeared as representatives on behalf of the Office of Financial and Insurance Regulation¹, Petitioner. Marc King, Respondent, appeared on his own behalf.

This matter under Section 18a of the Mortgage Brokers, Lenders, and Servicers Licensing Act (hereafter "MBLSLA"), 1987 PA 173, as amended, MCL 445.1651 *et seq.* concerns a notice of intention by Petitioner to prohibit Respondent 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.

On August 27, 2012, Senior Deputy Commissioner Stephen R. Hilker issued an Order Referring Complaint for Hearing, with attached Complaint. On August 27, 2012, Petitioner filed a request for hearing with the Michigan Administrative Hearing System.

On September 5, 2012, the Michigan Administrative Hearing System issued a Notice of Hearing that scheduled a contested case hearing on October 18, 2012. On October 10, 2012, the undersigned issued an Order Granting Adjournment that rescheduled the

¹ Pursuant to Executive Order 2013-1, effective March 18, 2013, the Office of Financial and Insurance Regulation is now known as the Department of Insurance and Financial Services. During the pending of this matter all authority, powers, duties, functions and responsibility of the Commissioner of the Office of Financial and Insurance Regulation were transferred to the Director of the Department of Insurance and Financial Services.

hearing to December 10, 2012. On December 6, 2012, Respondent requested an adjournment of the hearing and Petitioner filed an objection. On December 7, 2012, the undersigned issued an Order Denying Adjournment.

On December 10, 2012, the hearing was held as scheduled. Petitioner called _____ and _____ to testify. Respondent testified on his own behalf. No other witnesses were presented.

At the conclusion of the hearing, the record was held open for written closing arguments following preparation of the hearing transcript. On January 3, 2013, the hearing transcript was filed (hereafter "Tr"). On January 15, 2013, the undersigned issued an Order Scheduling Written Closing Arguments. On January 31, 2013, Respondent's Closing Argument was filed. On February 8, 2013, Petitioner's Closing Argument was filed.

On February 22, 2013, Petitioner filed a Supplemented Closing Argument with proposed Petitioner's Exhibit Nos. 9-12 as additional evidence. On February 25, 2013, Respondent filed a Reply to Written Closing Argument, in which Respondent admitted to certain of Petitioner's assertions of fact (proposed findings of fact) and disputed others as contained in Petitioner's Supplemented Closing Argument. Respondent did not file an objection to admission of Petitioner's Exhibit Nos. 9-12, and the undersigned determined to admit the exhibits into the record.

Petitioner offered the following exhibits that were admitted into the record as evidence:

1. Petitioner's Exhibit No. 1 is a copy of a Uniform Residential Loan Application, dated February 2, 2007.
2. Petitioner's Exhibit No. 2 is a copy of Fannie Mae Underwriting Findings, dated January 25, 2007.
3. Petitioner's Exhibit No. 3 is a copy of a Request for Verification of Deposit, dated December 11, 2006, regarding _____.
4. Petitioner's Exhibit No. 4 is a copy of a Uniform Residential Loan Application, dated May 7, 2007.
5. Petitioner's Exhibit No. 5 is a copy of a Request for Verification of Deposit, dated June 13, 2007, regarding _____.
6. Petitioner's Exhibit No. 6 is a copy of Fannie Mae Underwriting Findings, dated June 7, 2007.
7. (Petitioner's Exhibit No. 7 was withdrawn. Tr, p 121.)
8. Petitioner's Exhibit No. 8 is a copy of a Request for Verification of Deposit, dated October 18, 2006, regarding _____.

9. Petitioner's Exhibit No. 9 is a copy of a Mortgage Loan Origination Agreement, dated January 4, 2007.
10. Petitioner's Exhibit No. 10 is a copy of a Borrower's Authorization and Certification, dated February 2, 2007.
11. Petitioner's Exhibit No. 11 is a copy of a Borrower's Certification & General Authorization Certification, dated May 7, 2007.
12. Petitioner's Exhibit No. 12 is a copy of a Mortgage Broker Agreement, dated July 14, 2003.

Respondent offered the following exhibits that were admitted into the record as evidence:

1. Respondent's Exhibit A is a blank Fannie Mae Request for Verification of Deposit form.
2. Respondent's Exhibit B is a copy of a Borrower's Certification & General Authorization Certification, dated May 7, 2007.
3. Respondent's Exhibit C is a copy of an Account Verification Request Additional Information Required form.

The record was closed as of February 25, 2013.

ISSUES AND APPLICABLE LAW

The central issue presented is whether the Commissioner should suspend or prohibit Respondent 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. Section 18a of the MBLSLA provides in pertinent part:

Sec. 18a. (1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee or registrant under this act or a licensee or registrant under a financial licensing act. For purposes of this section, "fraud" shall include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) 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.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act.

(4) An order issued under subsection (2) or (3) is effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee or registrant of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to applicants for mortgage loans, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee or registrant. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the hearing required under subsection (2) to review the suspension shall be held not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee or registrant and from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee or registrant of which the person subject to the notice or order is an employee, agent, or control person. MCL 445.1668a. (Emphasis supplied).

FINDINGS OF FACT

Based on the entire record in this matter, including the witness testimony and admitted exhibits, the following findings of fact are established:

1. At times relevant to the Complaint, Marc King, Respondent, was the sole shareholder and employee of Complete Mortgage Corporation, which was located at 32811 Middlebelt Road, Suite H, in Farmington Hills, Michigan. [Tr, pp 173, 196; Pet. Exh. 12].
2. At times relevant to the Complaint, Complete Mortgage Corporation was licensed or registered as a mortgage broker in the state of Michigan. [Tr, pp 149-150, 172-173; Pet. Exh. 3 & 12].
3. From January 21, 2009 through September 20, 2011, the Office of Financial and Insurance Regulation, Petitioner, conducted an investigation of Respondent in the exercise of its statutory authority and responsibility.
4. Based on the information derived from the investigation, Petitioner's staff determined that Respondent had engaged in fraudulent activity in connection with residential mortgage loan applications with the intent to defraud investors or third parties. [Tr, pp 143-150, 166].
5. While acting as a residential mortgage loan originator, Respondent originated two residential mortgage loans for a single borrower that he likely knew or should have known contained material misrepresentations or fraudulent statements.
6. On July 14, 2003, Respondent as president of Complete Mortgage Corporation entered into a mortgage broker agreement with a mortgage lender, SunTrust Mortgage of Richmond, Virginia. Respondent likely worked

with a representative from SunTrust in the Novi or Canton, Michigan area, who then forwarded on loan materials to the branch office of SunTrust Mortgage in Cleveland, Ohio. Complete Mortgage Corporation also worked as a broker for other lenders. [Pet. Exh. 12; Tr, pp 15, 181-182].

7. The mortgage broker agreement between Respondent (through Complete Mortgage Corporation) and SunTrust Mortgage specified that Respondent was "responsible for the accurate preparation and completion of the Loan Application Package". [Pet. Exh. 12; Tr, pp 31, 48-49, 199].
8. The mortgage broker agreement further included a clause that Respondent (through Complete Mortgage Corporation) represented and warranted that the documents submitted for loan applications were genuine and accurate. The agreement stated in pertinent part;

"9. Representations and Warranties With Respect to Mortgage Loans. Broker represents and warrants to Lender as to each Mortgage Loan originated, processed and brokered by Broker hereunder, both as of the date that Broker submits each Loan Application Package to Lender and at the time of the Closing of each Mortgage Loan hereunder, as follows:

* * *

9.5. Accuracy of Application and Related Documentation. All information contained in each Application, the Loan Application Package and other documentation submitted to Lender in connection with the Mortgage Loan, including all signatures thereon, is genuine, complete and accurate; no such documentation has been in any manner changed or modified after its execution; no fraudulent or misleading information (including, without limitation, any information obtained from or concerning the Borrower or the Secured Property, any credit report regarding the Borrower, or any appraisal report regarding the Secured Property) has been provided to Lender in connection with the Mortgage Loan; **Broker is not aware of any information that would contradict or render inaccurate any documentation** submitted to Lender in connection with the Mortgage Loan; and Broker is not aware of any omissions in the Application, Loan Application Package or other documentation submitted to Lender in connection with the Mortgage Loan that would render the same incomplete or inaccurate. . . ." [Pet. Exh. 12, p 4 (Emphasis supplied)].

9. Based on the above-quoted mortgage broker agreement language, Respondent's responsibility as president and sole employee of Complete Mortgage Corporation likely was not simply to "round up paperwork" as "just a paper gatherer . . . to get the paperwork that showed up on the lender's approval" and respond to requests for more documents, as he testified. The lender likely relied upon Respondent as the mortgage broker for accurate communication to and from the loan applicant and the submission of genuine application materials. [Tr, p 34, 199].
10. Respondent did not likely perform the actual underwriting function for SunTrust Mortgage, however, as far as determining the amount of down payment or assets on hand that an applicant would need to qualify for a loan. Thomas Switzer, risk manager with SunTrust Mortgage, acknowledged that he did not have specific information regarding Respondent's underwriting function. The mortgage broker agreement further indicates that "Lender shall underwrite the Application and make a decision on the Application in its sole discretion". SunTrust Mortgage underwriters likely had the option of seeking to verify loan application information independent of a broker, and would sometimes do so depending upon the situation. [Pet. Exh. 2, 6 & 12, p 3; Tr, pp 34, 50-55, 194-195, 208].
11. In late 2006, [redacted] contacted Respondent by telephone at Complete Mortgage Corporation, after having been referred to him by an individual known as [redacted] of Detroit, Michigan. [Tr, pp 174-176].
12. Respondent had processed several loan applications for [redacted] in the five years prior to his first contact with [redacted] in 2006. [Tr, pp 174-176, 202].
13. As part of the loan application process for SunTrust Mortgage, Respondent obtained verifications of loan applicants' assets, including bank account balances. This bank account information was likely taken into account by SunTrust Mortgage in evaluating the borrower's available assets or money on demand, for underwriting purposes. [Tr, pp 35-37, 46-47, 206-207].
14. The record contains two verifications of deposit that were submitted to SunTrust Mortgage with the two different loan applications for [redacted]. [Pet. Exh. 3 & 5].
15. Although the Complaint alleges that Respondent falsified the two verifications of deposit, Petitioner's investigator did not determine exactly who had completed the handwritten portion of the documents that likely contain false information and a fraudulent signature. [Pet. Exh. 3 & 5; Tr, pp 160, 168].
16. The record contains a "Request for Verification of Deposit" form (hereafter "Verification of Deposit") bearing a signature date of December 11, 2006, with handwritten information regarding a purported checking account held by [redacted] at Comerica Bank. [Pet. Exh. 3].

17. The top half of the Verification of Deposit dated December 11, 2006, shows typed information that Respondent asserts was entered through the use of computer software from information inputted from the loan application. The form contains a typed date of "12/8/05", however, which would be one year prior to the signature date and when first had contact with him. [Tr, p 183; Pet. Exh. 3].
18. The bottom half of the Verification of Deposit dated December 11, 2006, contains handwritten information showing Account No. held by with a current balance of \$30,207.14 and an average balance of \$28,717.62. The stated date the account opened is handwritten in as "3-7-00". The form contains a "Signature of Depository Representative" as . [Pet. Exh. 3].
19. Respondent testified that prior to the Verification of Deposit dated December 11, 2006 as shown in Petitioner's Exhibit No. 3, he had not ever seen a document signed by of Comerica Bank. However, the record also contains a copy of a Verification of Deposit signed by and dated October 18, 2006, that was processed by Complete Mortgage Corporation for a loan application on behalf of , whose address was stated to be on in Detroit, Michigan. [Pet. Exh. 3 & 8; Tr, pp 182-188, 204-205].
20. Respondent testified that he likely faxed the Verification of Deposit form shown in Petitioner's Exhibit No. 3 to the Comerica Bank branch located at 13680 Michigan Avenue in Dearborn, Michigan, to be completed by a bank representative for purposes of application to purchase investment property located at in Detroit, Michigan. [Tr, p 187].
21. Respondent testified that he typically faxed such forms to a bank and the form copy in Petitioner's Exhibit No. 3 shows a couple of lines on the left side which he thinks indicates that it was faxed. In his later hearing testimony, however, Respondent also referred to "sitting at the desk with the receptionist from Comerica Bank filling it out and just waiting for a signature ". [Pet. Exh. 3; Tr, pp 179, 184, 187].
22. The Verification of Deposit shown in Petitioner's Exhibit No. 3 does not show clear evidence that it was sent to or received from Comerica Bank by means of fax, unlike the Verification of Deposit form purportedly completed by Comerica Bank on October 18, 2006 regarding an account held by shown in Petitioner's Exhibit No. 8.
23. The Verification of Deposit dated October 18, 2006, shows a purported Comerica Bank checking account for l , Account No. being slightly different from the purported Comerica Bank checking account for , Account No. . This slight difference in account numbers may indicate an intention to deceive the recipient of the form. [Pet.

Exh. 3, 5 & 8; Tr, p 205].

24. _____, formerly known as _____, credibly testified that she has been employed with Comerica Bank since 1987, and that she was a customer service administrator for the bank at times relevant to the Complaint in 2006. [Tr, pp 115-116].
25. _____ credibly testified that she had only ever completed a Verification of Deposit when an account holder customer walked the form into the bank to be completed and physically handed it to her. She denied having ever received such a form by mail to be completed, or having ever received such a form by fax from Complete Mortgage Corporation with an account holder customer's authorization. She credibly denied having knowledge of anyone else signing her name on a Verification of Deposit. She further credibly testified that the Verification for Deposit had to be submitted to the bank from the account holder customer, not from an agent for the customer. She stated:

"If – if the person who was the – the applicant, say the person who had the account with us, if they sent their real estate agent or someone there you wouldn't do it; it had to be from the person." [Tr, pp 120-121, 129 (Emphasis supplied)].
26. This credible testimony by _____ calls into question how Respondent as owner and sole employee of Complete Mortgage was able to fax Verification of Deposit forms to Comerica Bank for completion and signature, as Respondent testified he typically did. [Tr, pp 186-187].
27. The Verification of Deposit form purportedly completed by _____ on October 18, 2006 regarding _____ checking account contains notation that it was faxed to Comerica Bank at fax number _____. The record does not contain evidence to show whether this is a valid fax number at Comerica Bank.
28. On January 4, 2007, _____ entered into a Mortgage Loan Origination Agreement with Complete Mortgage Corporation. Respondent signed the document as the "Mortgage Loan Originator". [Pet. Exh. 9].
29. On February 2, 2007, _____ executed a Uniform Residential Loan Application to purchase the property at _____ in Detroit as an investment property. [Pet. Exh. 1; Tr, p 176].
30. On February 2, 2007, _____ executed a Borrower's Authorization and Certification document, in which she authorized Respondent to verify information contained in her loan application and to provide such information to the lender that the lender requests, including bank account balance information. Clearly, this is dated a couple months after the date of the

purported Verification of Deposit of December 11, 2006. [Pet. Exh. 3 & 10].

31. Respondent testified that [redacted] had given him her bank account information for Comerica Bank, Charter One and a 401K account with Citi Street, giving approximate amounts on deposit in these accounts. [Tr, p 177].
32. [redacted] asserted in her testimony that she only informed Respondent about having a Charter One account. She testified that she did not ever have a bank account with Comerica Bank and that she had not at any time informed Respondent that she had an account with Comerica Bank, although her signature appears on two loan applications that set forth Comerica Bank account information. [redacted] testified that she may have had an account with roughly \$30,207.14 in it at Charter One at the time, but she could not remember if that was at the relevant time. [Pet. Exh. 1 & 4; Tr, pp 78-81, 95].
33. It appears likely that any funds that [redacted] had in her Charter One account at the time were not put on the loan application because they were not considered "seasoned" funds, meaning that the funds had not been in the account for at least 60 days. SunTrust Mortgage required [redacted] as borrower to have her own funds to obtain a mortgage loan where 90% of the value of the property was being borrowed. [Tr, pp 44, 200].
34. Based on her overall testimony, [redacted] did not appear to be a credible or reliable historian of events regarding her knowledge of the use of Comerica Bank account information in the processing of her loan applications or other matters at issue in the Complaint. Her testimony at times appeared to be contradictory, incomplete, vague or misleading.
35. For example, [redacted] initially testified that she did not have a conversation with Respondent over the telephone, but later testified that she and Respondent "did have to talk on the phone several times . . ." At one point, she acknowledged that it "could be" that Respondent took her loan application over the telephone. At another point, she testified that she did not know Respondent "outside of . . . the one visit." She later stated that she had never met Respondent prior to a closing. At another point, she testified that she had only "called . . . [Respondent] one time for a split second". She acknowledged that she did not recall whether she contacted Respondent or he contacted her. When [redacted] was asked whether it was true that someone had added her to a bank account in order to close the mortgage loans, her answer was, "Not that I was told, no". When asked whether the seller of the properties, [redacted] had added her to his bank accounts to get the mortgage transactions completed, she answered, "No, not that I know of. I don't know that. If he did it, he did it. I don't know. He never mentioned about --". Upon cross-examination by Respondent and later questioning by the undersigned, [redacted] acknowledged that she had been compensated by [redacted] as a real estate flipper. She testified that she was paid \$10,000.00 by [redacted] to purchase each property, that she did not disclose

this payment to the lender or Respondent at the time of closing, and that [redacted] made the mortgage payments on the two properties prior to foreclosure. Regarding the mortgage loan application, [redacted] testified that she "could have signed one blank" and that she could not recall whether she had applied for mortgage loans by mail. She told Petitioner's investigator that she had purchased several properties from [redacted] [Tr, pp 75, 84-105, 156].

36. When asked whether the mortgage payments were being made from the stated Comerica Bank account, [redacted] testified, "That I can't recall". However, when she was asked if it was possible that the payments came from a Comerica Bank account she testified, "Could have been." Yet, [redacted] also testified that to her knowledge there was no connection between [redacted] and Comerica Bank. [Tr, pp 94-97].

37. Both Respondent's own testimony and his examination of other witnesses points to his likely having some knowledge of [redacted] improper involvement with the verification of deposit forms at Comerica Bank, although he may not know specifically who signed the forms. Respondent likely knew that the two verification of deposit documents submitted to the lender as part of the two loan applications contained falsified bank account information and fraudulent signatures by [redacted] [Pet. Exh. 3 & 5].

38. Respondent testified that it was "unknown at this point" who signed the verification of deposits. In his cross-examination of [redacted] Respondent asked her whether she had ever received a verification of deposit form by fax from Complete Mortgage Corporation "and filled it out on your lunch hour and handed it to [redacted]". He asked [redacted] if she knew a [redacted] or [redacted] at Comerica Bank. In his cross-examination of [redacted], Respondent asked her if it was true that [redacted] indicated to you that he had multiple accounts at Comerica Bank and knew many employees at the bank and he'd be able to jump the line and get things done like that". He asked [redacted] whether it was true that [redacted] "told you not to worry about how a verification would be filled out by a lady named [redacted] or [redacted]". In his cross-examination of Kenneth Lofton, financial institutions examiner for Petitioner, Respondent asked whether [redacted] had told him in an interview "that he filled out the verification of deposits so he could sell and flip these properties for a big profit". He also asked Mr. Lofton whether [redacted] had happened to mention in his interview "that he knew every personnel/staff member at Comerica that would help him out; do him a favor". Further, Respondent testified that he had "heard" that [redacted] and [redacted] had a joint account at Comerica Bank although he could not confirm it. He testified that [redacted] had "mentioned at one point that he had several accounts with Comerica; that he was a large depositor and he threw out some names of [redacted], [redacted], and [redacted] He said that when he went into the bank to make deposits or to obtain [redacted] - obtain information he said that these people would take him like he was a preferred customer." Respondent

denied having any information that anything unusual was going on with I accounts, however. [Tr, pp 129, 151, 157, 189-196, 206].

39. Respondent asserted in his testimony that he would not have to disclose to SunTrust Mortgage as lender the fact that had a joint bank account with even though "quite possibly" the funds in the account belonged to because was not the purchaser. [Tr, pp 206-207].
40. The initial mortgage loan application indicated that had a bank account with Comerica Bank, Account No. with \$30,207.14 on deposit. The application was signed by both and Respondent. [Pet. Exh. 1].
41. Respondent likely provided with all of the documents necessary to originate the mortgage loan and subsequently submitted the documents to SunTrust Mortgage, Inc. for approval.
42. Respondent submitted a completed Request for Verification of Deposit allegedly from Comerica Bank to SunTrust Mortgage as part of the loan application for the property. The Verification of Deposit indicated that had an account with Comerica Bank with funds in the amount of \$30,207.14 on deposit. [Pet. Exh. 3; Tr, pp 14, 165-166, 188].
43. According to the underwriter findings, needed to provide \$25,900.00 at the closing in order to close the mortgage loan. [Pet. Exh. 2].
44. At times relevant to the loan application, did not likely have a bank account with Comerica Bank. There was no valid Account No. in existence at Comerica Bank. [Tr, pp 95, 111, 113, 144-146; Resp. Exh. C].
45. The signature of the Comerica Bank representative on the Verification of Deposit form that purported to verify and confirm that had an account with the bank containing \$30,207.14 on deposit was likely a fraudulent signature, per the credible testimony of (formerly). It is also noted that the name is spelled ' on the Verification of Deposit form, but testified that she spelled her name . [Tr, pp 114-119].
46. Respondent knew that SunTrust Mortgage would rely on the information contained in the Verification of Deposit in making its decision on whether to approve and fund the mortgage loan. [Tr, p 201].
47. SunTrust Mortgage relied on the information contained the Verification of Deposit in making its determination to approve and fund the loan, as credibly testified to by and as shown in underwriting documentation. [Tr, pp 36-37; Pet. Exh. 2].

48. If SunTrust Mortgage had known that the information contained in the Verification of Deposit was inaccurate and a misrepresentation, SunTrust Mortgage likely would not have approved and funded the loan for the property in the amount of \$96,000.00. [Tr, pp 37, 62].
49. As a result of SunTrust Mortgage's reliance upon the accuracy and truthfulness of the Verification of Deposit, SunTrust Mortgage was induced into making a loan in the amount of \$96,000.00 that it likely otherwise would not have approved and funded. [Tr, p 37].
50. The HUD settlement statement for the _____ property referenced in the Complaint is not in the record. SunTrust Mortgage likely closed and funded the loan in or around February 2007.
51. It is more likely than not that the seller of the property, who was identified as _____, provided the closing funds on behalf of _____ of approximately \$25,900.00, although that is not definitely known on this record. _____ from SunTrust testified that he did not have information regarding the source of the funds at closing, and documentation regarding the source of the funds was not offered into evidence. _____ was not specifically asked at hearing about the source of the funds given to the lender at closing, but she did indicate that she had not given any compensation to _____ other than agreeing to purchase the properties in her name. She further testified that in her separate "contract" with _____, the agreement was that "he would take care of everything; I didn't have to pay for anything." [Pet. Exh. 1; Tr, pp 55, 92-93].
52. _____ had a separate "contract" or agreement with _____ that she would be compensated \$10,000.00 for purchasing the property, and that _____ would make the mortgage payments on the property. _____ received a check from _____ for \$10,000.00 after the mortgage loan closed. [Tr, p 90].
53. _____ did not disclose this separate agreement to the lender at the time of the mortgage loan application or closing. _____ testified that she did not inform Respondent of the separate agreement, either. [Tr, pp 91-94].
54. Respondent acknowledged in his testimony, however, that he had learned a couple weeks after the mortgage closings that there was an agreement between _____ and _____ to the effect that _____ would be reimbursed an amount in the "five figures". Respondent testified: "And then I found that she _____ was reimbursed and he _____ didn't make as much as the paperwork said." [Tr, pp 190-192].
55. Based on the mortgage loan agreement with SunTrust Mortgage and licensure requirements under the MBLSLA, Respondent was responsible for verifying and supplying accurate information to the lender at the time of the

loan application and closing. Although Respondent may have learned of the agreement between _____ and _____ after the closing, his mortgage broker agreement with SunTrust Mortgage likely continued. He failed to notify SunTrust Mortgage, the State of Michigan, Fannie Mae or any other authority when he learned that there was a separate agreement between the seller and borrower, which altered the amount of money that actually changed hands. [Tr, pp 31-32, 190-191].

56. According to Respondent, _____ had informed him that he had several accounts at Comerica Bank, that he was a large depositor and "he threw out some names of _____, _____, and _____". [Tr, pp 189, 192].
57. _____ likely made the mortgage payments on the _____ property for over one year, and then stopped making payments. The mortgage loan then went into foreclosure. Respondent testified that he did not know prior to the hearing that _____ was making the mortgage payment on the property. [Tr, pp 92-93, 195].
58. On May 7, 2007, _____ signed an "Authorization to Release Information", which authorized Respondent to provide loan information to the lender. [Pet. Exh. 11; Resp. Exh. B].
59. On May 7, 2007, _____ applied for another mortgage loan with Complete Mortgage Corporation, to purchase a property located at _____ in Detroit, Michigan. [Pet. Exh. 4].
60. Although Respondent testified that the top-half of the Verification of Deposit document would be inputted by software from the information in the loan application, the application information for the _____ property loan appears to be written in Respondent's handwriting. [Pet. Exh. 4].
61. The loan application for the _____ property indicates that the application was taken by mail. However, _____ signature and Respondent's signature are both dated May 7, 2007. [Pet. Exh. 4].
62. The initial mortgage loan application for the _____ property indicated that _____ had a bank account with Comerica Bank. The mortgage loan and closing applications were signed by both _____ and Respondent. [Pet. Exh. 4].
63. Respondent provided _____ with all the documents necessary to originate the mortgage loan and subsequently submitted the documents to SunTrust Mortgage for approval.
64. Respondent submitted a completed Request for Verification of Deposit from Comerica Bank to SunTrust Mortgage for the loan application pertaining to the _____ property. [Tr, p 188; Pet. Exh. 5].

65. is listed as the applicant on the Verification of Deposit. The handwritten portion of the Verification of Deposit again states that had a checking account with Comerica Bank, Account No. The form indicates that the bank account contained \$29,124.78 on deposit, with an average balance of \$28,531.13 and was opened on "4/7/00". [Pet. Exh. 5].
66. The Verification of Deposit was purportedly signed by " " on June 13, 2007. [Pet. Exh. 5].
67. The HUD settlement statement for the property that is referenced in the Complaint is not in the record evidence.
68. did not likely have a bank account with Comerica Bank. The signature of Comerica's representative on the Verification of Deposit that purported to verify and confirm that had an account with the bank containing \$29,124.78 on deposit, was likely a fraudulent signature. The account listed on the Verification of Deposit is not a valid Comerica Bank account. [Resp. Exh. C; Tr, p 146].
69. The Verification of Deposit for the property indicates that account was opened on "4/7/00" (April 7, 2000), even though the same Account No. was used that had been on the Verification of Deposit for the property with a purported account opening date of "3-7-00" (March 7, 2000). [Pet. Exh. 3 & 5].
70. Respondent knew that SunTrust Mortgage would rely on the information contained in the Verification of Deposit in making its decision on whether to approve and fund the mortgage loan for the property. [Tr, p 201].
71. SunTrust Mortgage relied on the information contained in the Verification of Deposit in making its determination to approve and fund the loan for the property. [Tr, pp 36-37; Pet. Exh. 6].
72. If SunTrust Mortgage had known that the information contained in the Verification of Deposit was inaccurate and a misrepresentation, SunTrust Mortgage would not have approved and funded the loan for the property in the amount of \$94,500.00. [Tr, pp 37, 62].
73. As a result of SunTrust Mortgage's reliance upon the accuracy and truthfulness of the Verification of Deposit, SunTrust Mortgage was likely induced into making a loan in the amount of \$94,500.00 that it likely otherwise would not have approved and funded.

74. The loan likely closed and funded in or around June 2007. [Pet. Exh. 6].

75. The seller of the property, _____, likely provided the closing funds on behalf of _____ for the _____ property, although that is not definitely shown in this record. [Tr, pp 55, 92].

76. _____ likely made mortgage payments on the _____ property for a time, and then it went into foreclosure. [Tr, pp 92-93].

CONCLUSIONS OF LAW

As complainant in this matter, Petitioner has the burden of proof to show by a preponderance of the evidence the truth of the factual and legal allegations set forth 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). See also, *Martucci v Detroit Commissioner of Police*, 322 Mich 270; 33 NW2d 789 (1948). Based on the above findings of fact, it is concluded that Petitioner has met its burden to show by a preponderance of the evidence that Respondent has likely engaged in fraudulent activity in connection with residential mortgage loan applications with the intent to defraud investors or third parties.

Section 18a of the MBLSLA defines "fraud" for purposes of that section to "include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud."

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's, Michigan Pleading and Practice (2d ed), §60.48, p 230. In a civil action for fraud, the Michigan Court of Appeals has stated that suppression of a material fact, which a party in good faith is duty-bound to disclose, is equivalent to a false representation and will support an action for "silent fraud". *M&D, Inc. v W.B. McConkey*, 231 Mich App 22; 585 NW2d 33 (1998). To be a material misrepresentation, it need not relate to the sole or major reason for the transaction, but must relate to a material or important fact. *Zine v Chrysler Corp.*, 236 Mich App 261; 600 NW2d 384 (1999). There must be reliance upon the misrepresentation to the plaintiff's detriment. *Rivet v State Farm Mutual Automobile Insurance Company*, 316 Fed. Appx. 440 (CA 6, 2009).

In the instant matter, it appears clear that Respondent did suppress or misrepresent material facts in processing two mortgage loan applications that he was duty bound to disclose. Respondent's actions likely induced the lender to make loan decisions, to the lender's or a third party's detriment. A preponderance of evidence shows that Respondent likely knew that the two verification of deposit documents submitted to the lender as part of the two loan applications contained falsified information and fraudulent signatures. Further, he did not notify the lender regarding undisclosed payments made between the seller and the borrower when he became aware of them. Respondent came to know that the amount of money that had changed hands between the seller

and the borrower, a material fact of the transaction, was not as had been stated but failed to notify the lender. The lender reasonably relied upon the accuracy and genuineness of the loan application information in determining to approve the loan. It is concluded that Respondent's actions in this regard meets both the intent and meaning of the term, "fraud" as it is defined by Section 18a of the MBLSLA.

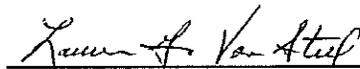
Therefore, pursuant to Section 18a of the MBLSLA, MCL 445.1668a, *supra*, an order of suspension or prohibition against Respondent from being employed by, an agent of, or a control person of a licensee or registrant under the MBLSLA or a financial licensing act is properly issued.

PROPOSED DECISION

The undersigned Administrative Law Judge proposes that the Commissioner adopt the above findings of fact and conclusions of law and issue an order of suspension or prohibition under Section 18a of the MBLSLA, or take other action as deemed appropriate under the authority of the act.

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the Department of Financial and Insurance Services, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after exceptions are filed.



Lauren G. Van Steel
Administrative Law Judge