

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Berkshire Capital LLC
License No. FL-4280
License No. SR-1947

Enforcement Case No. 17-14729

Respondent.
_____ /

Issued and entered
on January 3, 2018
by Rhonda J. Fossitt
Senior Deputy Director

ORDER ACCEPTING STIPULATION AND REQUIRING COMPLIANCE AND PAYMENT OF CIVIL FINES

Based upon the Stipulation to Entry of Order and the files and records of the Department of Insurance and Financial Services (DIFS), the Senior Deputy Director finds and concludes that:

1. Pursuant to Executive Order 2013-1, all authority, powers, duties, functions, and responsibilities of the Commissioner of the Office of Financial and Insurance Regulation (Commissioner) have been transferred to the Director of the Department of Insurance and Financial Services (Director).
2. The Senior Deputy Director has jurisdiction and authority to adopt and issue this Order Accepting Stipulation and Requiring Compliance and Payment of Civil Fines in this proceeding pursuant to the Michigan Administrative Procedures Act (APA), 1969 PA 306, as amended, MCL 24.201 *et seq.*, the Mortgage Brokers, Lenders and Servicers Licensing Act (MBLSLA), 1987 PA 173, as amended, MCL 445.1651 *et seq.*, and the Secondary Mortgage Loan Act (SMLA), 1981 PA 125, as amended, MCL 493.51 *et seq.*
3. All required notices have been issued in this case and the notices and service thereof were appropriate and lawful in all respects.
4. Acceptance of the Respondent's Stipulation to Entry of Order Requiring Compliance and Payment of Civil Fines is reasonable and in the public interest.
5. All applicable provisions of the APA have been met.
6. Respondent violated Section 29(2) of the MBLSLA, MCL 445.1679(2), by allowing one or more unlicensed mortgage loan originators to originate one or more Michigan mortgage loans.


7. Respondent violated Section 23(1) of the MBLSLA, MCL 445.1673(1), by charging applicants more than the actual expenses incurred by it in connection with three (3) Michigan mortgage loans, and failing to provide evidence of refunds.
8. Respondent violated Section 22(g) of the MBLSLA, MCL 445.1672(g), by failing, within a reasonable time, to furnish information as requested by DIFS.
9. 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 DIFS to determine whether the Respondent's business is conducted pursuant to the MBLSLA; this is a repeat violation from a previous examination;
10. Respondent violated Section 21(3) of the MBLSLA, MCL 445.1671(3), by failing to file the 2013 annual report by the due date; this is a repeat violation from a previous examination;
11. Respondent violated Section 6a(13) of the SMLA, MCL 493.56a(13), by failing to file the 2013 annual report by the due date; this is a repeat violation from a previous examination;
12. Respondent violated Section 21(2) of the MBLSLA, MCL 445.1671(2), by failing to preserve and keep available for examination each mortgage loan document in its possession or control; this is a repeat violation from a previous examination; and
13. Respondent violated Section 22(a) of the MBLSLA, MCL 445.1672(a), by failing to develop and implement a written information security program as it failed to incorporate risks to its business model of utilizing independent contractors, and failed to develop and implement a written anti-money laundering program as the provided program failed to provide independent testing, designate a compliance officer, and incorporate anti-money laundering training; this is a repeat violation from a previous examination.

NOW, THEREFORE, based upon the Stipulation to Entry of Order and the facts surrounding this case, **IT IS ORDERED THAT:**

- A. The Stipulation to Entry of Order submitted by Respondent to the Senior Deputy Director, incorporated herein by reference and made a part of this Order, is hereby **ACCEPTED**.
- B. Respondent shall pay to the state of Michigan, through DIFS, civil fines in the amount of **\$3,500.00**. The fines shall be paid in accordance with the attached Stipulation to Entry of Order Requiring Compliance and Payment of Civil Fines.
- C. Respondent shall provide evidence to DIFS that refunds were issued to three (3) applicants for overcharges cited in the Report of Examination in accordance with the attached Stipulation to Entry of Order Requiring Compliance and Payment of Civil Fines.

- D. The Director specifically retains jurisdiction over the matters contained herein and has the authority to issue such further order(s) as shall be deemed just, necessary, and appropriate in accordance with the provisions of the MBLSLA and SMLA. Failure to abide by the terms and provisions of the Stipulation to Entry of Order and this Order may result in the commencement of additional proceedings.

IT IS SO ORDERED.



Rhonda J. Fossitt
Senior Deputy Director

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

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Berkshire Capital LLC
License No. FL-4280
License No. SR-1947

Enforcement Case No. 17-14729

Respondent.

_____ /

**STIPULATION TO ENTRY OF ORDER
REQUIRING COMPLIANCE AND PAYMENT OF CIVIL FINES**

Berkshire Capital LLC (Respondent) hereby stipulates and agrees to the following:


1. Pursuant to Executive Order 2013-1, all authority, powers, duties, functions, and responsibilities of the Commissioner of the Office of Financial and Insurance Regulation (Commissioner) have been transferred to the Director of the Department of Insurance and Financial Services (Director).
2. The Department of Insurance and Financial Services (DIFS) staff (Staff) conducted an examination of Respondent's books and records commencing on or about September 8, 2015, pursuant to Section 11(2)(c) of the Mortgage Brokers, Lenders and Servicers Licensing Act (MBLSLA), MCL 445.1661(2)(c), and Section 6b(2)(b) of the Secondary Mortgage Loan Act (SMLA), MCL 493.56b(2)(b). The examination concluded on October 29, 2015.
3. On or about December 23, 2015, a Notice of Opportunity to Show Compliance (NOSC) was issued by DIFS to Respondent in the above-entitled matter, pursuant to the provisions of the Michigan Administrative Procedures Act (APA), 1969 PA 306, as amended, MCL 24.201 *et seq.*, the MBLSLA, 1987 PA 173, as amended, MCL 445.1651 *et seq.*, and the SMLA, 1981 PA 125, as amended, MCL 493.51 *et seq.*
4. The NOSC contained allegations that Respondent violated the MBLSLA and SMLA, and set forth the applicable laws and penalties.
5. Respondent exercised its opportunity to show compliance on or about January 18, 2016, by submitting a written response to the allegations raised in the examination.
6. Thereafter, DIFS Staff and Respondent conferred for the purpose of resolving this matter, and Respondent has determined to resolve this matter, pursuant to the terms set forth below.
7. On May 10, 2010, Respondent was licensed with DIFS as a mortgage broker, lender and servicer under the MBLSLA and as a mortgage broker, lender and servicer under the SMLA.

8. Respondent admits the following:
 - a. Respondent allowed one or more unlicensed mortgage loan originators to originate one or more Michigan mortgage loans in violation of Section 29(2) of the MBLSLA, MCL 445.1679(2);
 - b. Respondent charged applicants more than the actual expenses incurred by it in connection with three (3) Michigan mortgage loans, and failed to provide evidence of refunds, in violation of Section 23(1) of the MBLSLA, MCL 445.1673(1);
 - c. Respondent failed, within a reasonable time, to furnish information as requested by DIFS in violation of Section 22(g) of the MBLSLA, MCL 445.1672(g);
 - d. Respondent failed to maintain books, accounts, records, and documents of the business to enable DIFS to determine whether the Respondent's business is conducted pursuant to the MBLSLA in violation of Section 21(1) of the MBLSLA, MCL 445.1671(1); this is a repeat violation from a previous examination;
 - e. Respondent failed to file the 2013 annual report by the due date in violation of Section 21(3) of the MBLSLA, MCL 445.1671(3); this is a repeat violation from a previous examination;
 - f. Respondent failed to file the 2013 annual report by the due date in violation of Section 6a(13) of the SMLA, MCL 493.56a(13); this is a repeat violation from a previous examination;
 - g. Respondent failed to preserve and keep available for examination each mortgage loan document in its possession or control in violation of Section 21(2) of the MBLSLA, MCL 445.1671(2); this is a repeat violation from a previous examination; and
 - h. Respondent failed to develop and implement a written information security program as it failed to incorporate risks to its business model of utilizing independent contractors and failed to develop and implement a written anti-money laundering program as the provided program failed to provide independent testing, designate a compliance officer, and incorporate anti-money laundering training in violation of Section 22(a) of the MBLSLA, MCL 445.1672(a); this is a repeat violation from a previous examination.
9. For the violations of the MBLSLA and SMLA admitted by Respondent, Respondent agrees to the imposition of civil fines in the amount of **\$3,500.00**. Respondent shall remit payment of the civil fines within 30 days of the invoice date as indicated on the DIFS invoice. The amount of the civil fines takes into account that Respondent demonstrated an understanding of the violations cited in the NOSC and Report of Examination, and undertook administrative actions to ensure future violations will not occur.
10. Respondent agrees that it shall provide evidence to DIFS that refunds were issued to three (3) applicants for overcharges cited in the Report of Examination. Respondent shall provide evidence within 30 days of the date of the Order Requiring Compliance and Payment of Civil Fines.

11. Respondent agrees that it shall CEASE AND DESIST from any and all violations of the statutes, rules, and regulations identified in paragraph 8 of this Stipulation.
12. Respondent agrees that the procedural requirements of the APA, MBLSLA and SMLA have been met in all respects by both parties.
13. Respondent understands and agrees that this Stipulation will be presented to the Senior Deputy Director for approval. The Senior Deputy Director may, in her sole discretion, decide to accept or reject the Stipulation and Order. If the Senior Deputy Director accepts the Stipulation and Order, Respondent waives the right to a hearing in this matter and consents to the entry of the Order. If the Senior Deputy Director does not accept the Stipulation and Order, Respondent waives any objection to the Director holding a formal administrative hearing and making a decision after such hearing.
14. Respondent agrees that the Senior Deputy Director has jurisdiction and authority under the provisions of the APA, MBLSLA and SMLA to accept this Stipulation to Entry of Order Requiring Compliance and Payment of Civil Fines, and to issue an Order Requiring Compliance and Payment of Civil Fines resolving these proceedings.
15. Respondent understands and agrees that the failure to abide by and fully comply with the terms and conditions of this Stipulation and Order may, at the discretion of the Senior Deputy Director, result in further administrative compliance actions.
16. Respondent understands and acknowledges that the maximum civil fine is \$3,000.00 for each violation of the MBLSLA or the SMLA. Respondent understands and agrees that the amount of the civil fines has been negotiated in return for the avoidance of further proceedings and certain promises and conditions, one of which is the timely payment of civil fines. Should Respondent fail to pay the civil fines of **\$3,500.00** in accordance with the terms of this Stipulation and Order, Respondent agrees that an action will commence to determine if the Respondent has, in fact, failed to pay, and, if so, Respondent agrees that the civil fines will immediately increase to the maximum amount allowed for each violation under the MBLSLA or SMLA and shall be immediately due in full.

Respondent has had an opportunity to review this Stipulation and the accompanying Order Requiring Compliance and Payment of Civil Fines and have the same reviewed by legal counsel.

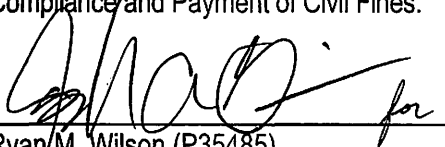
Berkshire Capital LLC



By: Gregory H. C.
Its: president

12/21/17
Dated

DIFS Staff approve this Stipulation and recommend that the Senior Deputy Director issue an Order Requiring Compliance and Payment of Civil Fines.



Ryan M. Wilson (P35485)
DIFS Staff Attorney

12/28/17
Dated