

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

Office of Financial and Insurance
Services,

Petitioner,

v

Case No. 06-517-L
Docket No. 2006-152

Joseph Saad,

Respondent.

For the Petitioner:

James E. Westrin (P67066)
Office of Financial and Insurance Services
611 W. Ottawa, 3rd Floor
Lansing, MI 48933
(517) 335-3369
FAX (517) 373-1224
jewestrin@michigan.gov

For the Respondent:

Joseph Saad
5718 Melbourne
Dearborn Heights, MI 48127

Issued and entered
this 19th day of April 2006
by John R. Schoonmaker
Special Deputy Commissioner

FINAL DECISION

The Administrative Law Judge issued a Proposal for Decision dated April 5, 2005. The Administrative Law Judge recommended that the Commissioner prohibit Respondent Joseph Saad from being employed by, an agent of, or control person of a licensee or registrant under the Mortgage Brokers, Lenders and Servicers Licensing Act

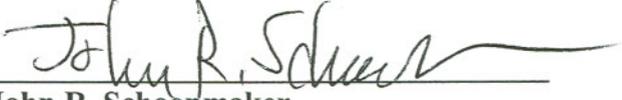
("MBLSLA"), 1987 PA 173, as amended, MCL 445.1651 et seq. or a licensee or registrant under a financial services licensing act.

Neither party filed Exceptions.

The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. The PFD is attached, adopted, and made part of this final decision.

ORDER

Therefore, it is ORDERED that Respondent Joseph Saad 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 services licensing act.



John R. Schoonmaker
Special Deputy Commissioner

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

| | | |
|---|------------|--|
| In the matter of | Docket No. | 2006-152 |
| Office of Financial and Insurance Services, Petitioner | Agency No. | 06-517-MB |
| v Joseph Saad, Respondent | Agency: | Office of Financial & Insurance Services |
| | Case Type: | Sanction Revocation |

Issued and entered
this 17th day of March 2006
by C. David Jones
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On February 8, 2006, Richard D. Lavolette, Chief Deputy Commissioner, issued and entered a Notice of Intent to Issue Order of Prohibition Pursuant to MCL 445.1668a (Notice of Intent). Also, on February 8, 2006, the Chief Deputy Commissioner issued and entered an Order Referring Notice of Intent to Issue Order of Prohibition for Hearing (Order Referring).

On February 13, 2006, a Notice of Hearing was mailed to Respondent by certified mail, return receipt requested, to his last known address. The Notice of Hearing scheduled the hearing to commence on March 15, 2006, at 9:00 a.m., at 611 West Ottawa Street, Lansing, Michigan. Enclosed were the Notice of Intent and Order Referring. These were returned on March 7, 2006 marked "unclaimed."

Also, on March 8, 2006, a Certificate of Service was received, signed by James Westrin. This indicated that on February 28, 2006, he served upon Respondent, at his last known address, a copy of the Notice of Hearing, Notice of Intent, and Order Referring, by first class mail and UPS/Next Day Air.

On March 15, 2006, the hearing commenced at 9:30 a.m. Respondent did not appear nor request an adjournment. Petitioner was represented by Attorney James Westrin.

Petitioner proceeded under MCL 445.1668a, MCL 24.272(1), and MCL 24.278(2).

ISSUES AND APPLICABLE LAW

The applicable law in this case is the Mortgage Brokers, Lenders, and Servicers Licensing (MBLSL) Act, MCL 445.1651-1684, and the Administrative Procedures Act, MCL 24.201-24.328.

The issue in this case is as follows:

1. Should an Order of Prohibition be issued against Respondent based upon engaging in fraud?

FINDINGS OF FACT

1. On November 22, 2002, the Office of Financial and Insurance Services (OFIS) received a "Bad Actors" complaint from Access Mortgage Financial Corporation's (Access) attorney alleging that Respondent was engaged in fraudulent mortgage loan activities pursuant to Section 18(a) of the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA), MCL 445.1668(a).

2. Upon receipt of the complaint, pursuant to Section 13(1), MCL 445.1663(1), of the MBLSLA, OFIS staff (Staff) conducted an investigation. During the course of the investigation, Staff determined that Respondent engaged in fraudulent activity in connection with several mortgage loan transactions while employed by Access. The information obtained as a result of the investigation is set forth more specifically below.
3. Respondent, while employed by Access, closed twenty-eight mortgage loans that were refinanced through Best Title and closed in the name of Access. Instead of transferring the twenty-eight checks (in the sum of \$134,664.75) from the mortgage transactions to Access, as is required by Respondent's employment contract with Access, Respondent endorsed the checks as the President of Access and cashed them. Respondent was not an Officer of Access and had no authority to endorse checks on behalf of the company. The checks were either cashed at Comerica Bank into an account of B.M.S. Real Estate or they were cashed at Schafer's Market. None of the proceeds from those checks were, at any time, forwarded to Access.
4. OFIS' investigation revealed that on June 4, 2003, Respondent entered, under advisement, a Plea of Nolo Contendere, in the Third Circuit Court for the County of Wayne, to embezzlement by an agent of over \$20,000 or more. In exchange for a plea to a lesser offense, Respondent agreed to pay restitution in the amount of \$35,000, these payments were to be made as follows: \$15,000 by August 4, 2003, \$10,000 by October 4, 2003, and \$10,000 by January 5, 2004.

Pursuant to the conditions of the Plea Agreement, the felony charges were to be reduced to misdemeanor embezzlement by an agent of less than one thousand dollars, if the Respondent paid restitution as agreed. If Respondent failed to adhere to the conditions of his Plea Agreement, a felony charge would be entered against Respondent, and he would be sentenced accordingly. Respondent complied with the conditions of the Plea Agreement and, accordingly, a conviction was entered against Respondent in the Third Circuit Court for the County of Wayne for misdemeanor embezzlement by an agent of less than one thousand dollars on January 21, 2004.

5. Respondent stipulated in the Plea Agreement that, from August 7, 2002, through October 7, 2002, he was a branch manager for Access's office located in Dearborn Heights, Michigan. That he closed twenty-eight mortgage loans through Best Title, also located in Dearborn Heights. In the name of Access, he received checks from Best Title related to those closings totaling \$134,644.75, and, representing himself as the president of Access, signed and cashed the checks. He further admitted that none of the proceeds from the twenty-eight loans were forwarded to Access as required under his employment contract with Access.
6. The aforementioned facts describe conduct which clearly indicates that Respondent has engaged in a pattern of fraudulent practices in connection with mortgage loans subject to the MBLSLA.

CONCLUSIONS OF LAW

A. Effect of Respondent's Failure to Appear at Hearing

The MBLSL Act provides in relevant part as follows:

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.

MCL 445.1668a(2)

The Administrative Procedures Act provides in relevant part as follows:

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)

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)

Respondent failed to appear at hearing after proper service of Notice. No adjournment was requested or granted. Under these circumstances, it was appropriate to consider Respondent in default and to have consented to issuance of an Order of Prohibition, and to proceed with the hearing.

B. Fraud

Petitioner accused Respondent of committing fraud, contrary to the following:

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.

MCL 445.1668a

Respondent did commit fraud. Respondent's failure to appear at hearing is essentially an admission of the charges in the Notice of Intent, found as facts above.

C. Remedy

The Notice of Intent proposed issuing the following order:

... to prohibit Respondent Joseph Saad 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 services licensing act.

Such an order is expressly authorized by MCL 445.1668a(3) for a person who has committed fraud, such as Respondent.

PROPOSED DECISION

Based upon the above Findings of Fact and Conclusions of Law, I recommend the following decision:

1. Respondent committed fraud under MCL 445.1668a.
2. The following Order should be issued:

... to prohibit Respondent Joseph Saad 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 services licensing act.

EXCEPTIONS

If a party chooses to file Exceptions to the Proposal for Decision, the Exceptions must be filed within twenty (20) days after the Proposal for Decision is issued and entered. If an opposing party chooses to file a Response to the Exceptions, it must be filed within five (5) days after the Exceptions are filed. All Exceptions and Responses to

Exceptions must be filed with the Office of Financial and Insurance Services, Division of Insurance, Attn: Dawn Kobus, Ottawa State Office Building, 611 West Ottawa, Third Floor, P.O. Box 30200, Lansing, Michigan 48909, and with the opposing party.



C. David Jones
C. David Jones
Administrative Law Judge

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DEPARTMENT OF LABOR AND ECONOMIC GROWTH
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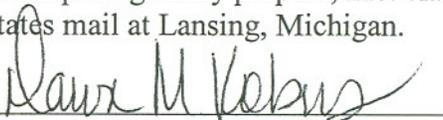
CERTIFICATE OF SERVICE

Dawn M. Kobus, being first duly sworn, deposes and states that on the 18th day of April, 2006, she served copies of the FINAL DECISION upon all parties and/or attorneys of record as follows:

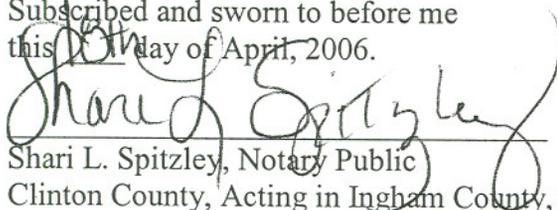
Joseph Saad
5718 Melbourne
Dearborn Heights, MI 48127

James E. Westrin (I.D. Mail)
Office of Financial and Insurance Services
611 W. Ottawa, 3rd Floor

by placing same in a properly addressed envelope(s) with postage fully prepaid, first class mail, and depositing said envelope(s) in the United States mail at Lansing, Michigan.


Dawn M. Kobus

Subscribed and sworn to before me
this 18th day of April, 2006.


Shari L. Spitzley, Notary Public
Clinton County, Acting in Ingham County, Michigan
My commission expires: 8/22/2007