

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF MORTGAGE LENDING

Before the Commissioner of the Division of Mortgage Lending

In the Matter of:

SIERRA MOUNTAIN CAPITAL LLC,
d/b/a/ or a/k/a SIERRA MOUNTAIN MORTGAGE,
d/b/a or a/k/a SIERRA MOUNTAIN LLC,
Mortgage Broker License Nos. UNL,

and

DAVID LOHREY,
Mortgage Broker / Agent License No. UNL,

Respondents.

Order No. 2018-004

Case No. 2018-004

ORDER TO CEASE AND DESIST,
ORDER IMPOSING AN ADMINISTRATIVE FINE AND INVESTIGATIVE COSTS,
AND
NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE HEARING

Issued and Entered,
This 19th day of April, 2018,
By Cathy Sheehy,
Commissioner

I.

ORDER TO CEASE AND DESIST AND
ORDER IMPOSING AN ADMINISTRATIVE FINE AND INVESTIGATIVE COSTS

The Commissioner of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending (“the Commissioner”) having been statutorily charged with the responsibility and authority to administer and enforce Chapter 645B of the Nevada Revised Statutes, 645B.010 *et seq.* (“the Statute”), and Chapter 645B of the Nevada Administrative Code, NAC 645B.001 *et seq.* (“the Regulation”) (collectively, “the Act”), governing the licensing and conduct of mortgage brokers and mortgage agents doing business in the State of Nevada; and,

1 The Commissioner having been vested with general supervisory power and control over all
2 mortgage brokers and mortgage agents doing business in the State of Nevada pursuant to the Statute;
3 and,

4 The Commissioner having been further vested with broad authority to conduct investigations to
5 determine whether any person is violating or has violated any provision of the Act; and,

6 The Division of Mortgage Lending (“the Division”) having received information indicating that
7 SIERRA MOUNTAIN CAPITAL LLC (“SMC”), d/b/a or a/k/a SIERRA MOUNTAIN MORTGAGE
8 (“SMM”), d/b/a or a/k/a SIERRA MOUNTAIN LLC (SMLLC), and DAVID LOHREY (“LOHREY”)
9 (collectively, “the RESPONDENTS”) are or were engaged in activity requiring licensure as a mortgage
10 broker under the Statute; and,

11 The Division having conducted an investigation of RESPONDENTS’ business practices
12 pursuant to NRS 645B.060(2)(c), and determined, from that investigation, that RESPONDENTS are or
13 were engaged in activity requiring licensure as a mortgage broker under the Statute; and,

14 The Division staff having reported the results of its investigation to the Commissioner; and,

15 The Commissioner having reviewed the results of the investigation, makes the following
16 FINDINGS OF FACT and CONCLUSIONS OF LAW:

17 **Findings of Fact**

18 1. NRS 645B.900 prohibits any person from offering or providing any of the services of a
19 mortgage broker or mortgage agent or otherwise engaging in, carrying on or holding himself or herself
20 out as engaging in or carrying on the business of a mortgage broker or mortgage agent without first
21 obtaining the applicable license issued pursuant to the Statute, unless the person is properly exempt
22 from licensure.

23 2. NRS 645B.0127(1) defines “[m]ortgage broker” to include any person who directly or
24 indirectly does any of the following:

- 25 (a) Holds himself or herself out for hire to serve as an agent for any
26 person in an attempt to obtain a loan which will be secured by a lien on real
27 property;

1 (b) Holds himself or herself out for hire to serve as an agent for any
2 person who has money to lend, if the loan is or will be secured by a lien on real
3 property;

4 (c) Holds himself or herself out as being able to make loans secured by
5 liens on real property;

6 (d) Holds himself or herself out as being able to buy or sell notes secured
7 by liens on real property; or

8 (e) Offers for sale in this State any security which is exempt from
9 registration under state or federal law and purports to make investments in
10 promissory notes secured by liens on real property.

11 3. RESPONDENTS are not currently and have at no time relevant to this matter been
12 licensed by the Commissioner as a mortgage broker in Nevada under the Statute.

13 4. The Division's investigation specifically found the following:

14 a. SMC is an active domestic limited-liability company (NV Business ID No. NV
15 20161315169) whose principal place of business is located at 50 W. Liberty Street, Suite 1040, Reno,
16 Nevada 89501 ("Liberty Street office"). Based upon information and belief, LOHREY is the resident
17 agent and managing member of SMC.

18 b. SMM is an expired business entity (Entity No. E0323542017-7), whose name
19 reservation, as most recently held by LOHREY commencing on or about July 10, 2017, expired October
20 10, 2017. Based upon information and belief, SMM is also located at the Liberty Street office, as well
21 an office situated at 9090 Double Diamond Pkwy, Suite A, Reno, Nevada 89521 ("Double Diamond
22 office").

23 c. The state business license of SMLLC, a domestic limited-liability company in default
24 status (NV Business ID No. NV20151690940), expired on November 30, 2017. Based upon
25 information and belief, LOHREY is or was the resident agent and managing member of SMLLC.
26 While at least since approximately February 22, 2017, the building directory for the office address of 50
27 W. Liberty Street in Reno, Nevada identified SMM as being housed in Suite 1040, the signage adjacent
28 to the unmarked door of that office depicted the name of the business entity, SMLLC.

1 d. On or about July 18, 2016, the Division became aware of facts indicating that
2 RESPONDENTS were engaged in activity requiring licensure under the Statute without having first
3 obtained licensure. In particular, directly through their websites, www.sierramountaincapital.biz and
4 www.sierramountainmortgage.com, in which RESPONDENTS directed prospective borrowers to
5 contact both SMC and SMM at the same Liberty Street address and same telephone number (SMM's
6 website additionally identifying accessibility at the Double Diamond office), RESPONDENTS
7 advertised and promoted the "highest quality financial services" of SMC and SMM in providing the
8 "lowest" nationwide rates for the purchase of a home or refinancing an outstanding loan, and the "best
9 loans [sic] options" available on commercial properties. The SMM website expressly touted SMM's
10 "experienced team of mortgage brokers" as the "premier mortgage team located in Reno, Nevada" for
11 borrowers seeking a mortgage in the Reno area, while the SMC website elaborated upon the ability and
12 commitment of the SMC team, as comprised of "outstanding mortgage professionals," to ensure that
13 prospective borrowers "receive a financial solution that is tailored specifically to meet [the client's]
14 financing needs." In furtherance of RESPONDENTS' solicitation of business, both websites provided
15 drop-down menus to enable consumer-selection of loan type, credit history, and property value, for
16 provision of a "quick quote" by which RESPONDENTS' background-knowledge of and company
17 contact of that consumer could be facilitated. Each website additionally proclaimed LOHREY as the
18 managing member and founder of SMM, "servicing the Reno and Lake Tahoe region with residential
19 Mortgage Programs."

20 e. On or about February 22, 2017, two Division investigators arrived at the location of
21 SMM's Double Diamond office as RESPONDENTS identified and portrayed by photograph on its
22 website, www.sierramountainmortgage.com, to find it closed. Signs posted on the office windows
23 directed public attention to SMM, but requested visitors to contact SMM by telephone at its "downtown
24 office," at the same telephone number as provided on both of RESPONDENTS' websites for the
25 Liberty Street office. Existing office furniture and equipment, including computers, was clearly visible
26 to the investigators through the windows of the Double Diamond office.

27 f. Also on or about February 22, 2017, the same two Division investigators arrived at
28 the Liberty Street office where they met with LOHREY, the office of which RESPONDENTS identified

1 and portrayed by photograph as the “Headquarters” of SMM on their website,
2 www.sierramountainmortgage.com, and as the “Reno Office” for SMC on their website,
3 www.sierramountaincapital.biz. The investigators observed that the Liberty Street office appeared to
4 have been occupied for some time. In response to questioning by the investigators, LOHREY asserted
5 that the Double Diamond office was empty and without staff (expressing that he was considering
6 subleasing such office), and claimed that completion of his application for a Nevada broker license had
7 been delayed. LOHREY disputed that RESPONDENTS were conducting Nevada lending activities,
8 representing that SMLLC was a business engaged in commercial and residential development which
9 neither lends money nor sells real estate, the employees of which perform only clerical and IT-related
10 duties.

11 g. As instructed by the two Division investigators, LOHREY agreed to remove all
12 signage referring to SMM from the windows of the Double Diamond office, and to make appropriate
13 corrections to all building-directory references at the Liberty Street office to include removal of any
14 signage for unlicensed entities. In response to the Division’s May 10, 2017 written request for
15 provision of clear photographs to document compliance with such directives, RESPONDENTS
16 submitted only murky photographs to depict their business signage and failed to provide sufficient and
17 acceptable answers to additional information requested by the Division regarding RESPONDENTS’
18 business activities and status of RESPONDENTS’ claimed licensing application(s) to conduct mortgage
19 broker activities in Nevada. To date, Division records do not reflect the existence of any pending
20 licensure applications by or on behalf of LOHREY, SMC, SMM, or SMLLC.

21 h. In RESPONDENTS’ operation of two websites, their display of signage in Nevada
22 business offices which provided the appearance that SMC, SMM, and SMLCC were open to the public,
23 and by conducting business transactions in the two offices at which they so advertised mortgage
24 brokerage activities to occur, RESPONDENTS, within the meaning of NRS 645B.0127(1), hold and/or
25 held themselves out for hire to serve as an agent for any person in an attempt to obtain a loan. As
26 evidenced by the foregoing described activities, RESPONDENTS solicit and/or solicited the business of
27 prospective Nevada borrowers in the collection, analysis, and submission of financial information to
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1 RESPONDENTS in their attempts to obtain a loan for the purchase or refinancing of residential or
2 commercial properties as secured by liens on real property.

3 5. RESPONDENTS engaged in activities and conduct which require licensure as a
4 mortgage broker under the Statute and are not exempt from licensure under the Statute.

5 6. Any finding of fact that may be deemed a conclusion of law shall be so construed.

6 **Conclusions of Law**

7 7. Unless otherwise exempt, it is a violation of NRS 645B.900 for any person to offer or
8 provide any of the services of a mortgage broker or mortgage agent or to engage in, carry on, or
9 otherwise hold himself or herself out as engaging in or carrying on the business of a mortgage broker or
10 mortgage agent without first obtaining the applicable license issued pursuant to the Statute.

11 8. By providing or offering to provide the services of a mortgage broker without having
12 first obtained the applicable license under the Statute, and not being exempt from the licensure
13 requirements, RESPONDENTS are in violation of NRS 645B.900.

14 9. The Commissioner is authorized pursuant to NAC 645B.515 to order a person to cease
15 and desist from engaging in any activity that violates any provision of the Statute or Regulation.

16 10. The Commissioner is required pursuant to NRS 645B.690(1)(a) to impose an
17 administrative fine of not more than \$50,000.00 on a person who offers or provides any of the services
18 of a mortgage broker or otherwise engages in, carries on, or holds himself or herself out as engaging in
19 or carrying on the business of a mortgage broker and, at the time the person was required to have a
20 license pursuant to the Statute and the person did not have such a license.

21 11. Any conclusion of law that may be deemed a finding of fact shall be so construed.

22 **Order**

23 The Commissioner having formed the opinion based upon the foregoing that RESPONDENTS
24 have been or are engaged in unlicensed activities in violation of the Statute, and concluded and
25 determined that RESPONDENTS should be ordered to: 1) cease and desist from engaging in any
26 activity requiring licensure under NRS 645B; 2) pay an administrative fine; and 3) pay the Division's
27 investigative costs.

1 NOW, THEREFORE, IT IS ORDERED that SIERRA MOUNTAIN CAPITAL LLC, d/b/a or
2 a/k/a SIERRA MOUNTAIN MORTGAGE, d/b/a or a/k/a SIERRA MOUNTAIN LLC, and DAVID
3 LOHREY shall immediately CEASE AND DESIST from advertising, engaging in, or otherwise
4 carrying on or holding themselves out as engaging in or carrying on any activities that require licensure
5 as a mortgage broker under the Statute.

6 IT IS FURTHER ORDERED that an ADMINISTRATIVE FINE in the amount of \$50,000.00
7 shall be and hereby is imposed, jointly and severally, on SIERRA MOUNTAIN CAPITAL LLC, d/b/a
8 or a/k/a SIERRA MOUNTAIN MORTGAGE, d/b/a or a/k/a SIERRA MOUNTAIN LLC, and DAVID
9 LOHREY, in accordance with NRS 645B.690(1)(a). The ADMINISTRATIVE FINE shall be due and
10 payable on the 30th day following the effective date of this Order and shall be tendered to the Division
11 in accordance with the attached wire transfer instructions.

12 IT IS FURTHER ORDERED that the Division's INVESTIGATIVE COSTS in the amount of
13 \$4,740.00 shall be and hereby is assessed, jointly and severally, on SIERRA MOUNTAIN CAPITAL
14 LLC, d/b/a or a/k/a SIERRA MOUNTAIN MORTGAGE, d/b/a or a/k/a SIERRA MOUNTAIN LLC,
15 and DAVID LOHREY, in accordance with NRS 622.400. The INVESTIGATIVE COSTS shall be due
16 and payable on the 30th day following the effective date of this Order and shall be tendered to the
17 Division with the ADMINISTRATIVE FINE in accordance with the attached wire transfer instructions.

18 IT IS FURTHER ORDERED that an administrative hearing shall be scheduled in this matter
19 only if RESPONDENTS timely request an administrative hearing in accordance with the instructions
20 set forth in Section II of this Order entitled Notice of Opportunity for Administrative Hearing. **If no**
21 **administrative hearing is requested within 30 calendar days of the effective date of this ORDER,**
22 **RESPONDENTS shall be deemed to have waived and relinquished the right to an administrative**
23 **hearing in this matter and a FINAL ORDER shall be issued in this matter.**

24 IT IS FURTHER ORDERED that this Order shall be and is effective and enforceable on the
25 date that it is issued and entered, as shown in the caption hereof.

26 IT IS FURTHER ORDERED that this Order shall remain effective and enforceable until
27 terminated, modified, set aside, or suspended in writing by the Commissioner.

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1 IT IS FURTHER ORDERED that the Commissioner specifically retains jurisdiction over the
2 matters contained herein and has the authority to issue such further order(s) as the Commissioner shall
3 deem just, necessary, and appropriate to enforce the Act and protect the public.

4 IT IS SO ORDERED.

5 DIVISION OF MORTGAGE LENDING

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7 By: 
8 Cathy Sheehy, Commissioner

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10 II.

11 NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE HEARING

12 **NAC 645B.515 provides as follows:**

13 1. If a person engages in an activity in violation of the provisions of this
14 chapter or chapter 645B of NRS, the Commissioner may issue an order to the
15 person directing the person to cease and desist from engaging in the activity.

16 2. The order to cease and desist must be in writing and must state that, in
17 the opinion of the Commissioner, the person has engaged in an activity:

18 (a) For which the person has not received a license or certificate of
19 exemption as required by chapter 645B of NRS; or

20 (b) In a manner that violates the provisions of this chapter or chapter
21 645B of NRS.

22 3. A person who receives an order to cease and desist pursuant to this
23 section shall not engage in any activity governed by chapter 645B of NRS after
24 receiving the order unless the order is suspended or rescinded.

25 4. Not later than 30 calendar days after receiving an order pursuant to
26 this section, the person who receives the order may file a verified petition with
27 the Commissioner to request a hearing. Upon receipt of the verified petition, the
28 Commissioner may, for good cause shown, suspend the order pending the

1 hearing. The Commissioner will hold the hearing on a date not later than 30
2 calendar days after the date the petition is filed unless the Commissioner and the
3 person agree to another date. The order to cease and desist is rescinded if the
4 Commissioner fails to:

5 (a) Hold a hearing:

6 (1) Not later than 30 calendar days after the date the petition is filed;

7 or

8 (2) On a date agreed to by the Commissioner and the person; or

9 (b) Render a written decision within 45 days after the date the hearing is
10 concluded.

11 5. The decision of the Commissioner after a hearing is a final decision of
12 the Division for the purposes of judicial review.

13 [Emphasis added.]

14 **NRS 645B.750 provides as follows:**

15 1. If the Commissioner enters an order taking any disciplinary action
16 against a person or denying a person's application for a license, the Commissioner
17 shall cause a written notice of the order to be served personally or sent by certified
18 mail or telegram to the person.

19 2. Unless a hearing has already been conducted concerning the matter,
20 the person, upon application, is entitled to a hearing. If the person does not make
21 such an application within 20 days after the date of the initial order, the
22 Commissioner shall enter a final order concerning the matter.

23 3. A person may appeal a final order of the Commissioner in accordance
24 with the provisions of chapter 233B of NRS that apply to a contested case.

25 [Emphasis added.]

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