STATE OF NEVADA

DEPARTMENT OF BUSINESS AND INDUSTRY

DIVISION OF MORTGAGE LENDING

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In re:

HEATHER BARNES,

Respondent.

NOTICE OF INTENT TO REVOKE MORTGAGE AGENT LICENSE, NOTICE OF INTENT TO IMPOSE FINE AND NOTICE OF RIGHT TO REQUEST HEARING

The licensing and regulation of mortgage brokers and mortgage agents in the State of Nevada is governed by Chapter 645B of the Nevada Revised Statutes (hereinafter, "NRS") and Chapter 645B of the Nevada Administrative Code (hereinafter, "NAC"). The State of Nevada, Department of Business and Industry, Division of Mortgage Lending (hereinafter, the "DIVISION") has the general duty to exercise supervision and control over mortgage brokers and mortgage agents, as well as mortgage brokering activity. *See*, NRS 645B.060(1), NRS 645B.690 (1)(a) and NRS 645B.670. Pursuant to that authority, the DIVISION makes the following Findings of Fact, Conclusions of Law, and Order as follows:

FACTUAL ALLEGATIONS

1. On June 21, 2007, Heather Barnes (hereinafter "RESPONDENT") was issued a mortgage agent license pursuant to Chapter 645B of the NRS. The DIVISION currently classifies RESPONDENT'S license status as closed.

2. Prior to her date of licensure, through the mortgage brokerage firm Excel Funding, LLC., RESPONDENT originated a loan (Jordan) for the purchase of a residence in Henderson, Nevada on April 26, 2007.

3. On October 11, 2007, the DIVISION received a Complaint alleging RESPONDENT'S sister Briget Barnes originated and closed a loan (Jordan) for the purchase

of a residence in the State of Nevada without having a mortgage broker or mortgage agent license in Nevada.

4. After receiving the Complaint regarding RESPONDENT'S sister Briget Barnes, the DIVISION commenced an investigation, the results of which established RESPONDENT originated the Jordan loan and received a commission for the loan on complainant's property in the State of Nevada, despite not being licensed as a mortgage broker or agent in Nevada.

5. Pursuant to NRS 645B.0125, a "mortgage agent" is defined, in part, as "...a natural person who... is an employee or independent contractor of a mortgage broker who is required to be licensed pursuant to this chapter..." and "...is authorized by the mortgage broker to engage in, on behalf of the mortgage broker, any activity that would require the person, if he were not an employee or independent contractor of the mortgage broker, to be licensed as a mortgage broker pursuant to this chapter..." *See*, NRS 645B.0125 (1)(a)(b).

6. Pursuant to NRS 645B.0127, a "mortgage broker" is defined, in pertinent part, as "...a person who directly or indirectly... holds himself out for hire to serve as an agent for any person in an attempt to obtain a loan which will be secured by a lien on real property..." or "...holds himself out as being able to make loans secured by liens on real property..." *See*, NRS 645B.0127(1)(a)(c).

7. Pursuant to NRS 645B.400, "(a) person shall not act as or provide any of the services of a mortgage agent or otherwise engage in, carry on or hold himself out as engaging in or carrying on the activities of a mortgage agent unless the person has a license as a mortgage agent issued pursuant to NRS 645B.410." *See*, NRS 645B.400.

8. Pursuant to NRS 645B.900, unless a person is exempt from Chapter 645B of NRS and complies with exemption requirements, "(i)t is unlawful for any person to offer or provide any of the services of a mortgage broker or mortgage agent or otherwise to engage in, carry on or hold himself out as engaging in or carrying on the business of a mortgage broker or mortgage agent without first obtaining the applicable license issued pursuant to this chapter...." *See*, NRS 645B.900.

9. Pursuant to NRS 645B.060, the Division is charged with conducting "...such investigations as may be necessary to determine whether any person has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner...." *See*, NRS 645B.060(2)(c).

10. Pursuant to NRS 645B.060, the Division is further charged with conducting "...such other examainations, periodic or special audits, investigations and hearings as may be necessary for the efficient administration of the laws of this State regarding mortgage brokers and mortgage agents...." *See*, NRS 645B.060(2)(e).

11. Pursuant to NRS 645B.610, the Division is also charged with investigating "...each violation alleged in [a] complaint..." received by the Division and "...shall determine from the investigation whether there is reasonable cause to believe that the person committed the alleged violation...." *See*, NRS 645B.610(1), (3).

12. Pursuant to NRS 645B.690, "(i)f a person offers or provides any of the services of a ...mortgage agent or otherwise engages in, carries on or holds himself out as engaging in or carrying on the business of a...mortgage agent and, at the time...(t)he person was required to have a license pursuant to this chapter and the person did not have such a license...the Commissioner shall impose upon the person an administrative fine of not more than $10,000 for each violation and if the person has a license, the Commissioner shall revoke it...." *See*, NRS 645B.690(1)(a).

VIOLATIONS OF LAW

1. Having investigated the RESPONDENT'S conduct in this matter, and upon receipt of competent evidence, it has been determined that RESPONDENT did, in fact, engage in mortgage agent activity in the State of Nevada without a license to do so, thereby violating NRS 645B.690(1)(a) and NRS 645B.900.

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that, pursuant to NRS 645B.750, upon the timely filing of an application with the Division within **twenty (20) days** of the date of this Order, RESPONDENT shall be entitled to a hearing with regard to the contents of this Order. At that hearing, pursuant to NRS 645B.690(1)(a), the Division will seek:

a. To revoke RESPONDENT'S mortgage agent license for RESPONDENT'S violations of NRS 645B.400 and NRS 645B.900;

b. The imposition of an administrative fine against RESPONDENT in the amount of Five Thousand Dollars and No Cents ($5,000.00) for RESPONDENT'S violations of NRS 645B.900, as well as the Division's investigative costs of One Hundred Eighty Dollars and No Cents ($180.00) and attorney's fees, if any, incurred herein, to be proven at the hearing; and

c. RESPONDENT'S payment, in full, of the administrative fine, investigative costs and fees to the Division within **thirty (30) days** of entry of the Final Order.

NOTICE TO RESPONDENT: If you request a hearing, you are specifically informed that you have the right to appear and be heard in your defense, either personally or through your counsel of choice at your own expense. At the hearing, if one is timely requested, the Division will call witnesses and present evidence against you. You have the right to respond and to present relevant evidence and argument on all issues involved. You have the right to call and examine witnesses, introduce exhibits and cross-examine opposing witnesses on any matter relevant to the issues involved.

If the Division prevails at any hearing, it may request that attorney's fees and costs be awarded pursuant to NRS 622.400.

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Should Respondent not request a hearing within **twenty (20) days** of the date of this Order, the Division will enter a Final Order in this matter against RESPONDENT, as required by NRS 645B.750(2).

DATED this 11th day of May, 2009.

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

By: _____
JOSEPH L. WALTUCH, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending, and that on May 12, 2009, I deposited in the U.S. mail, postage prepaid via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing, NOTICE OF INTENT TO REVOKE MORTGAGE AGENT LICENSE, NOTICE OF INTENT TO IMPOSE FINE AND NOTICE OF RIGHT TO REQUEST HEARING for HEATHER BARNES, addressed as follows:

Heather Barnes
5069 Wright View
Las Vegas, NV 89120

Certified Receipt Number: 7006 2760 0000 0876 4937

DATED this 11th day of May, 2009

By: Susan Slack
Employee of the Division