

1 STATE OF NEVADA
2 DEPARTMENT OF BUSINESS AND INDUSTRY
3 DIVISION OF MORTGAGE LENDING

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5 In re:
6 Excel Funding, LLC,
7 Respondent.

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10 FINAL ORDER

11 The State of Nevada, Department of Business and Industry, Division of Mortgage
12 Lending (hereinafter, the "Division"), having served the Respondent, Excel Funding, LLC,
13 (hereinafter, "Respondent") on May 11, 2009, with its Notice of Intent to Impose Fine and
14 Notice of Right to Request Hearing, attached hereto as Exhibit "1" and incorporated herein by
15 reference, which notified Respondent that a final order would issue in this matter unless,
16 within twenty (20) days of entry and receipt of said Order, Respondent requested a hearing to
17 contest the charges against it, with said request to be made in writing, and;

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19 Said Order having been sent to Respondent via certified mail and regular mail, and
20 received by Respondent on May 14, 2009, and;

21 Respondent having failed to request a hearing in this matter, and good cause
22 appearing:

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1 NOW, THEREFORE, **IT IS HEREBY ORDERED** that, pursuant to NRS 645B.670 and
2 NRS 645B.690, Respondent will be subject to the administrative fines, fees and/or costs as set
3 forth in the original Order attached hereto as Exhibit "1".

4 **IT IS FURTHER ORDERED** that the sum of said administrative fines, fees and/or costs
5 be paid in full within **thirty (30) days** of entry of the instant Order;

6 Dated this 4th day of June, 2009.

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8 **STATE OF NEVADA**

9 **DEPARTMENT OF BUSINESS AND INDUSTRY**

10 **DIVISION OF MORTGAGE LENDING**

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14 **By:** Joseph L. Waltuch
15 **JOSEPH L. WALTUCH, COMMISSIONER**
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EXHIBIT “1”

1 STATE OF NEVADA
2 DEPARTMENT OF BUSINESS AND INDUSTRY
3 DIVISION OF MORTGAGE LENDING

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5 In re:

6 EXCEL FUNDING, LLC.

7 Respondent(s).

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10 **NOTICE OF INTENT TO IMPOSE FINE AND**
11 **NOTICE OF RIGHT TO REQUEST HEARING**

12 The licensing and regulation of mortgage brokers and mortgage agents in the State of
13 Nevada is governed by Chapter 645B of the Nevada Revised Statutes (hereinafter, "NRS")
14 and Chapter 645B of the Nevada Administrative Code (hereinafter, "NAC"). The State of
15 Nevada, Department of Business and Industry, Division of Mortgage Lending (hereinafter, the
16 "DIVISION") has the general duty to exercise supervision and control over mortgage brokers
17 and mortgage agents, as well as mortgage brokering activity. See, NRS 645B.060(1), NRS
18 645B.690(1)(a) and NRS 645B.670. Pursuant to that authority, the DIVISION makes the
19 following Findings of Fact, Conclusions of Law, and Order as follows:

20 **FACTUAL ALLEGATIONS**

21 1. Upon information and belief, EXCEL FUNDING, LLC. (hereinafter,
22 "RESPONDENT") was a Limited Liability Company in the State of Nevada whose status was
23 revoked by the Nevada Secretary of State on March 16, 2006. RESPONDENT was issued a
24 license to operate as a mortgage broker in the State of Nevada on May 1, 2007. The DIVISION
25 classifies RESPONDENT'S license as closed as of April 4, 2009.

26 2. On October 11, 2007, the DIVISION received a Complaint alleging
27 RESPONDENT allowed Briget Barnes to originate and close a mortgage loan in Nevada
28 (Jordan) without being licensed as either a mortgage agent or mortgage broker in Nevada.

1 3. After receiving the Complaint regarding RESPONDENT, the DIVISION
2 commenced an investigation, the results of which established RESPONDENT was not granted
3 a mortgage broker license in the State of Nevada until May 1, 2007, however RESPONDENT
4 employed Heather Barnes and allowed her and her sister Briget Barnes to originate the Jordan
5 loan, which was to be secured by real property in the State of Nevada, on April 26, 2007 while
6 RESPONDENT was not licensed with the DIVISION.

7 4. During the investigation, the DIVISION also learned RESPONDENT employed
8 Heather Barnes and allowed her and her sister Briget Barnes to originate and close the Jordan
9 loan, which was to be secured by real property in the State of Nevada, while neither Heather nor
10 Briget was licensed with the DIVISION.

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

15 6. Pursuant to NRS 645B.610, the DIVISION is further charged with investigating
16 "...each violation alleged in [a] complaint..." received by the DIVISION and "...shall determine
17 from the investigation whether there is reasonable cause to believe that the [accused]
18 committed the alleged violation..." See, NRS 645B.610(1)(3).

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

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

3 9. Pursuant to NRS 645B.450 (2), "A mortgage broker shall not associate with or
4 employ a person as a mortgage agent or authorize a person to be associated with the mortgage
5 broker as a mortgage agent if the mortgage agent is not licensed with the Division pursuant to
6 NRS 645B.410".

7 10. Pursuant to NRS 645B.900, "...it is unlawful for any person to offer or provide any
8 of the services of a mortgage broker or mortgage agent or otherwise to engage in, carry on or
9 hold himself out as engaging in or carrying on the business of a mortgage broker or agent
10 without first obtaining the applicable license issued pursuant to this chapter..." See, NRS
11 645B.900.

12 11. Pursuant to NRS 645B.690, "...if a person offers or provides any of the services
13 of a mortgage broker or mortgage agent or otherwise engages in, carries on or holds himself
14 out as engaging in or carrying on the business of a mortgage broker or mortgage agent and,
15 at the time... the person was required to have a license pursuant to this chapter and the
16 person did not have such a license... the Commissioner shall impose upon the person an
17 administrative fine of not more than \$10,000 for each violation..." See, NRS 645B.690(1)(a),
18 (b).

19 12. Pursuant to NRS 645B.670(2)(c), "...for each violation committed by a mortgage
20 broker, the Commissioner may impose upon the mortgage broker an administrative fine of not
21 more than \$10,000, may suspend, revoke or place conditions upon his license, or may do
22 both, if the mortgage broker, whether or not acting as such... [D]oes not conduct his
23 business in accordance with law or has violated any provision of this chapter, a regulation
24 adopted pursuant to this chapter or an order of the Commissioner. See, NRS 645B.670(2)(c).

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1 **VIOLATIONS OF LAW**

2 1. Having investigated the RESPONDENT'S conduct in this matter and received
3 competent evidence that RESPONDENT employed Heather Barnes to originate and close
4 mortgage business in the State of Nevada while unlicensed, it has been determined that
5 RESPONDENT did in fact violate NRS 645B.450(2) and 645B.670(2)(c).

6 2. RESPONDENT also associated with Briget Barnes and allowed her to originate
7 and close mortgage business in the State of Nevada while unlicensed, and therefore violated
8 NRS 645B.450(2) and NRS 645B.670(2)(c).

9 3. Having investigated and received competent evidence, it has been determined
10 RESPONDENT engaged in mortgage brokering activity in the State of Nevada without a
11 license to do so, thereby violating NRS 645B.690(1)(a) and NRS 645B.900.

12 **ORDER**

13 **NOW, THEREFORE,** the **COMMISSIONER** of the **DIVISION** **HEREBY ORDERS**
14 pursuant to NRS 645B.750, upon written application to the Division within **twenty (20) days** of
15 the date of this order, RESPONDENT shall be entitled to a hearing with regard to the content of
16 this Order. At that hearing the DIVISION will seek to:

17 1. Impose a fine of Twenty Thousand Dollars and No Cents (\$20,000.00) for
18 RESPONDENT'S violations of NRS Chapter 645B, as well as for the DIVISION'S investigative
19 costs in the amount of Nine Hundred and Ninety Dollars and No Cents (\$990.00) and attorneys
20 fees, if any, incurred herein, to be proven at the hearing.

21 2. Require RESPONDENT'S payment, in full, of the administrative fine, investigative
22 costs and fees within **thirty (30) days** of the entry of the Final Order issued pursuant to NRS
23 645B.750(2).

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

1 call and examine witnesses, introduce exhibits and cross-examine opposing witnesses on any
2 matter relevant to the issues involved.

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

5 Should RESPONDENT not request a hearing with **twenty (20) days** of the receipt of this
6 Order, the DIVISION will enter a Final Order in this matter against RESPONDENT including
7 such fine, costs and fees.

8 DATED this ^{11th} day of May, 2009.

10 STATE OF NEVADA
11 DEPARTMENT OF BUSINESS AND INDUSTRY
12 DIVISION OF MORTGAGE LENDING

13 By: Joseph L. Waltuch
14 JOSEPH L. WALTUCH, COMMISSIONER

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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 June 5, 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. FINAL ORDER IMPOSING FINE for EXCEL FUNDING LLC, addressed as follows:

Nick Jurun
Excel Funding LLC
28924 S. Western Ave., Ste. 100
Rancho Palos Verde, CA 90275

Certified Receipt Number: 7006 2760 0000 0875 9766

DATED this 4th day of June, 2009

By: 
Employee of the Division