

1 **STATE OF NEVADA**

2 **DEPARTMENT OF BUSINESS AND INDUSTRY**

3 **DIVISION OF MORTGAGE LENDING**

4 In re:

5 Coby Culley,

6 Respondent.

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10 **STIPULATED SETTLEMENT AGREEMENT**

11 The licensing and regulation of mortgage brokers in the State of Nevada is governed by Chapter 645B
12 of the Nevada Revised Statutes (hereinafter, "NRS") and Chapter 645B of the Nevada Administrative
13 Code. The State of Nevada, Department of Business and Industry, Division of Mortgage Lending
14 (hereinafter, the "Division") has the general duty to exercise supervision and control over mortgage
15 brokers and mortgage brokering activity. See, NRS 645B.060(1), NRS 645B.690(1)(a), NRS 645B.400
16 and NRS 645B.670. Pursuant to that authority, as well as NRS 645B.610(6), the Division hereby enters
17 into the following Stipulated Settlement Agreement ("Agreement") with Coby Culley (hereinafter
18 "Respondent"), as follows:
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20 **RECITALS**

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23 WHEREAS, the Division issued a mortgage broker license, #3072 to Silver Stream Financial, LLC
24 ("Silver Stream") on March 6, 2008; Coby Culley was the designated employee for Silver Stream and 50%
25 owner, with Gina Faccenetti holding the remaining interest; and

26 WHEREAS, Silver Stream failed to renew its mortgage broker license by June 30, 2008 and the
27 license was canceled; and
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1 WHEREAS, Silver Steams failed to pay assessments and fees owed to the Division as follows:

2 a. Attorney General assessment FY 2008, \$560.44, plus late penalty, total owed \$616.48;

3 b. CPA assessment FY 2008, \$71.50 plus late penalty, total owed \$78.65;

4 c. Examination fee, \$348.78, June 2008, which includes a late fee; and

5 WHEREAS, aside from his ownership interest in Silver Stream, Respondent has not been issued
6 any additional mortgage broker or mortgage agent licenses by the Division, and has not been approved
7 to serve as a qualified employee for another licensee; and

8 WHEREAS, during a routine examination of Cedar Woods Financial ("Cedar") in April 2009 it
9 was discovered that Respondent was conducting mortgage activities in Nevada on behalf of Cedar without
10 proper licensure from December 2008 to the present and accepted three loan applications, in violation of
11 NRS 645B.400; and

12 WHEREAS, Respondent maintains he completed a mortgage agent license application in
13 November 2008 and provided the application to Rochelle Sutherland, the designated qualified employee
14 for Cedar; however, he claims that unbeknownst to him, the application was not submitted and the
15 application was found in Ms. Sutherland's desk drawer during the April 2009 examination; and

16 WHEREAS, Respondent claims he did not know, and that it was not explained to him by Ms.
17 Sutherland, that a mortgage agent applicant cannot conduct business until such time as the license is
18 issued by the Division; and

19 WHEREAS, Cedar submitted Respondent for approval as Cedar's qualified employee on March
20 11, 2009; and

21 WHEREAS, pursuant to NRS 645B.400, "a person shall not act as or provide any of the services
22 of a mortgage agent or otherwise engage in, carry on or hold himself out as engaging in or carrying on
23 the activities of a mortgage agent unless the person has a license as a mortgage agent issued pursuant to
24 NRS 645B.410" *See, NRS 645B.400*; and

1 WHEREAS, Pursuant to NRS 645B.670(3), "for each violation committed by a mortgage agent,
2 the Commissioner may impose upon the mortgage agent an administrative fine of not more than
3 \$10,000, may suspend, revoke or place conditions upon his license, or may do both, if the mortgage
4 agent, whether or not acting as such...“(j) (h)as violated any provision of this chapter, a regulation
5 adopted pursuant to this chapter or an order of the Commissioner or has assisted or offered to assist
6 another person to commit such a violation..” See, NRS 645B.670(3)(j).

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8 NOW, THEREFORE, in consideration of the representations, covenants and conditions set forth
9 herein, IT IS HEREBY STIPULATED AND AGREED by the Division and Respondent (“Parties”) that
10 the unlicensed activity, as specified above and referenced herein, shall be settled on the following terms
11 and conditions:

12 *cd* 1. Respondent hereby acknowledges and agrees, with full knowledge, to waive its right to
13 have the Division file a complaint and to go to a hearing in this matter.

14 *cd* 2. Respondent agrees that the above-described actions constituted a violation of NRS
15 645B.400 and NRS 645B.670, although Respondent maintains, and the Division agrees, that
16 Respondent’s above-described actions may not have been intentional.

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18 *cd* 3. In light of the Parties’ desire to resolve this matter, Respondent shall, pursuant to NRS
19 645B.670, pay an administrative fine in the sum of Two Thousand Five Hundred Dollars and No Cents
20 (\$2,500.00) to the Division within thirty (30) days of this Agreement being executed by the
21 Commissioner of the Division.

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23 4. In light of the Parties’ desire to resolve this matter, Respondent shall further pay all
24 assessments and fees owed to the Division by Silver Stream within thirty (30) days of this Agreement
25 being executed by the Commissioner of the Division as follows:

26 a. Attorney General assessment FY 2008, \$560.44, plus late penalty, total owed \$616.48;

27 b. CPA assessment FY 2008, \$71.50 plus late penalty, total owed \$78.65;
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1 c. Examination fee, \$348.78, June 2008, which includes a late fee; this amount has been
2 submitted for collection which may result in additional costs or interest charges. Respondent will be
3 required to contact the collection agency directly regarding payment of the examination fee at the
4 following address:

5 Municipal Services bureau (MSB Collection Agency)
6 6505 Airport Blvd., Ste 100
7 Austin, TX 78754
(800) 866-9436

8 The Respondent must provide documentation satisfactory to the Division that payment has been
9 remitted.

10 5. Subject to the requirements of this paragraph, the Division will allow Respondent to serve
11 as Cedar's qualified employee. Respondent must meet the prescribed standards in law for approval and
12 must fully comply with the Division with respect to the qualified employee and/or mortgage agent
13 approval process, including the immediate submission of a mortgage agent application. Respondent
14 must further comply with all terms and conditions of this Agreement. Respondent shall not be deemed
15 approved as the qualified employee until he receives approval in writing from the Division, which
16 approval will be sent under separate cover if Respondent is otherwise qualified by law as determined by
17 the Division.
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19 6. Respondent further acknowledges and agrees that in the event Respondent violates any of
20 the provisions of this Agreement, the Division shall retain any and all remedies available to it in
21 accordance with NRS Chapter 645B.
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23 7. The Parties agree and acknowledge that this Agreement shall constitute the complete and
24 final resolution of any issues arising out of the Division's investigation into Respondent's conduct as
25 specified herein.
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27 8. This Agreement is intended to resolve all issues related to the findings in the April 7,
28 2009 examination of Cedar as they relate to Respondent's unlicensed activity. However, this

1 Agreement shall not prevent the Division from filing administrative actions against Respondent in the
2 future for new acts or allegations which may constitute new violations whether or not the same or
3 similar to those disposed of by this Agreement. In addition, the Division may utilize the findings of the
4 April 2009 examination of Cedar, as they relate to Respondent's activities, as well as this Agreement as
5 evidence in any future administrative actions.

6 9. The Parties hereto represent and warrant that the person executing this Agreement on
7 behalf of each party has full power and authority to enter into this Agreement and has the legal capacity
8 to conduct the legal obligations assigned to it under this Agreement.
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10 10. Except as described above in paragraphs, 3 and 4, each party shall pay its own costs and
11 fees with respect to this matter.

12 11. Respondent further acknowledges and agrees that the Division shall keep the original of
13 this Agreement.
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15 12. This Agreement, as well as the rights and obligations of the Parties hereto, shall be
16 interpreted, governed, and construed pursuant to the laws of the State of Nevada, and any action to
17 enforce this Agreement shall be brought in the Second Judicial District Court of the State of Nevada in
18 and for Washoe County.

19 13. If the Division is the prevailing party to any action brought to enforce this Agreement,
20 the Division shall be entitled to reasonable costs and attorney's fees. It is specifically agreed that
21 reasonable attorney's fees for State-employed attorneys shall be \$125.00 per hour.
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23 14. If any provision contained in this Agreement is held to be unenforceable by a court of
24 law or equity, this Agreement shall be construed as if such a provision(s) did not exist and the non-
25 enforceability of such provisions(s) shall not be held to render any other provision(s) of this Agreement
26 unenforceable. The failure to declare a breach or the actual waiver of any particular breach of the instant
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1 Agreement or its material terms, by either party, shall not operate as a waiver by such party of any of its
2 rights or remedies as to any other breach.

3 15. In consideration for the execution of this Agreement, Respondent, for himself and his
4 heirs, executors, administrators, successors and assigns, hereby releases and forever discharges the State
5 of Nevada, the Division, the Nevada Attorney General, and each of their members, agents and
6 employees in their individual and representative capacities, from any and all manner of actions, causes
7 of action, suits, debts, judgments, executions, claims and demands whatsoever known or unknown, in
8 law and equity, that Respondent ever had, now has, may have or claim to have against any and all of
9 the persons or entities named in this paragraph arising out of, or by reason of, the unlicensed activity
10 referenced above, this action or any other matter relating thereto.
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12 16. In consideration for the execution of this Agreement, Respondent hereby indemnifies and
13 holds harmless the State of Nevada, the Division, the Nevada Attorney General, and each of their
14 members, agents and employees in their individual and representative capacities, against any and all
15 claims, suits and actions, brought against any of the persons named in this paragraph by reason of the
16 investigation of the unlicensed activity referenced above, this action and all other matters relating
17 thereto, and against any and all expenses, damages, charges and costs, including court costs and attorney
18 fees which may be sustained by any of the persons and entities named in this paragraph as a result of said
19 claims, suits and actions.
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21 17. Respondent enters into this Agreement freely and voluntarily. Respondent acknowledges
22 that this agreement is not the product of force, threats, or any other form of coercion or duress, but is the
23 product of discussions between Respondent and the Division and the attorney for the Division. This
24 Agreement constitutes the entire agreement of the parties, and it is intended as complete and exclusive
25 statement of the promises, representations, negotiations, and discussions of the parties. Unless otherwise
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1 expressly authorized by its terms, this Agreement shall be binding upon the parties unless any
2 modification of the same in writing, and signed by the respective parties hereto.

3 18. **NOTICE TO RESPONDENT:** By executing this Agreement, you hereby agree that you
4 are waiving certain rights as set forth herein. As Respondent, you are specifically informed that you
5 have the right to request that the Division file an administrative complaint against you. At any hearing
6 on such a complaint, you would have the right to appear and be heard in your defense, either personally
7 or through your counsel of choice. If the Division were to file a complaint, at the hearing the Division
8 would have the burden of proving the allegations in the complaint and would call witnesses and present
9 evidence against you. You would have the right to respond and to present relevant evidence and
10 argument on all issues involved. You would have the right to call and examine witnesses, introduce
11 exhibits, and cross-examine opposing witnesses on any matter relevant to the issues involved.
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13 You would have the right to request that the Commissioner of the Division issue subpoenas to
14 compel witnesses to testify and/or evidence to be offered on your behalf. In making this request, you
15 may be required to demonstrate the relevance of the witness's testimony and/or evidence. Other
16 important rights you have are listed in NRS Chapter 645B and NRS Chapter 233B.
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18 19. The parties agree and understand that this Agreement is intended to operate as a full and
19 final settlement of the above referenced issues. Respondent is aware that he may retain an attorney at
20 his own cost and expense to review this Agreement but has freely and voluntarily chosen not to do so.

21 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be
22 legally bound thereby.
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25 DATED this 31 day of August, 2009.

26 By: Coby Culley
27 Coby Culley
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DATED this 16th day of ~~August~~ September, 2009.

State of Nevada, Department of
Business and Industry,
Division of Mortgage Lending

By: Joseph L. Waltuch
Joseph L. Waltuch, Commissioner

CERTIFICATE OF MAILING

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I certify that I am an employee of the State of Nevada, and that on this ____ day of August, 2009, I served a true and correct copy of the foregoing **STIPULATED SETTLEMENT AGREEMENT**, via U.S. MAIL with certified return receipt requested to:

Cuby Culley

CERTIFIED RECEIPT NO. _____

Division of Mortgage Lending Employee