

1  
2  
3  
4  
5  
6  
7  
8

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

In re:

Matthew Jason Garnes,

Respondent.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18

**ORDER TO CEASE AND DESIST, 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 "Division") has the general duty to exercise supervision and control over mortgage brokers and mortgage agents, as well as mortgage broker and mortgage agent activity. See NRS 645B.060(1), NRS 645B.670 and NRS 645B.690. Pursuant to that authority, the Division makes the following Factual Allegations, Violations of Law, and Order:

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FACTUAL ALLEGATIONS**

1. On approximately February 20, 2003, the Division issued Matthew Jason Garnes (hereinafter "Respondent"), an individual, a mortgage agent license (License No. 9615) pursuant to NRS 645B.

2. Respondent operated within the State of Nevada as a licensed mortgage agent until his license expired on February 21, 2010 for failure to renew. See NRS 645B.050(1). The Division currently classifies Respondent's license as "cancelled."

3. Based upon information and belief, and at all relevant times herein mentioned, Garnes Mortgage was and is an alter ego of Respondent that held itself out, and continues to

1 hold itself out, as engaging in or carrying on the business of a mortgage broker pursuant to  
2 Chapter 645B of NRS.

3 4. Based upon information and belief, and at all relevant times herein mentioned,  
4 Respondent held himself out, and continues to hold himself out, as being a mortgage broker  
5 doing business in Nevada, and also held himself out, and continues to hold himself out, as  
6 being affiliated with Evofi One and Prime Cap, two of Respondent's former employers, when  
7 Respondent was and is no longer so affiliated.

8 5. On or about March 24, 2010, the Division learned that Respondent was advertising  
9 mortgage broker/mortgage agent services on his website at [www.garnesmortgage.com](http://www.garnesmortgage.com).

10 6. On or about March 24, 2010 and May 5, 2010, respectively, Division investigator DK  
11 contacted Respondent and advised him that, as of February 2010, Respondent did not have  
12 an active mortgage agent license and must immediately cease and desist all advertisement of  
13 mortgage broker and/or mortgage agent services on his website at  
14 [www.garnesmortgage.com](http://www.garnesmortgage.com).

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

19 8. Pursuant to NRS 645B.060(2)(c), the Division commenced an investigation on  
20 May 13, 2010 which revealed, among other things, that:

21 a. Respondent conducted, and continues to conduct, mortgage broker  
22 business under the name Garnes Mortgage and held, and continues to hold, himself out as  
23 engaging in or carrying on the business of a mortgage broker; and

24 b. Respondent advertised, and continues to advertise, mortgage broker  
25 services on Respondent's website at [www.garnesmortgage.com](http://www.garnesmortgage.com), and advertised, and  
26 continues to advertise, his affiliation with Evofi One and Prime Cap, two of Respondent's  
27 former employers, when Respondent was and is no longer so affiliated.

28

1 9. Pursuant to NRS 645B.400, “[a] person shall not act as or provide any of the  
2 services of a mortgage agent or otherwise engage in, carry on or hold himself or herself out  
3 as engaging in or carrying on the activities of a mortgage agent unless the person has a  
4 license as a mortgage agent issued pursuant to NRS 645B.410.”

5 10. Pursuant to NRS 645B.900, “[i]t is unlawful for any person to offer or provide any of  
6 the services of a mortgage broker or mortgage agent or otherwise to engage in, carry on or  
7 hold himself or herself out as engaging in or carrying on the business of a mortgage broker or  
8 mortgage agent without first obtaining the applicable license issued pursuant to this chapter,  
9 unless the person: 1. Is exempt from the provisions of this chapter; and 2. Complies with the  
10 requirements for that exemption.”

11 11. Pursuant to NRS 645B.690, “[i]f a person offers or provides any of the services of a  
12 mortgage broker or mortgage agent or otherwise engages in, carries on or holds himself out  
13 as engaging in or carrying on the business of a mortgage broker or mortgage agent and, at  
14 the time...[t]he person was required to have a license pursuant to this chapter and the person  
15 did not have such a license...The Commissioner shall impose upon the person an  
16 administrative fine of not more than \$50,000 for each violation and if the person has a license,  
17 the Commissioner shall revoke it...” See NRS 645B.690(1)(a).

18 12. Pursuant to NAC 645B.340, “[i]f a person engages in an activity in violation of the  
19 provisions of this chapter of chapter 645B of NRS, the Commissioner may issue an order to  
20 the person directing the person to cease and desist from engaging in the activity.” See NAC  
21 645B.340(1).

## 22 VIOLATIONS OF LAW

23 After investigating this matter, the Division determined that:

24 1. Respondent held, and continues to hold, himself out as Garnes Mortgage and was  
25 and is engaging in or carrying on the business of a mortgage broker pursuant to Chapter  
26 645B of NRS without a license or certificate of exemption;

27 2. Respondent advertised, and continues to advertise, mortgage broker and mortgage  
28 agent services on Respondent’s website at www.garnesmortgage.com, and advertised, and

1 continues to advertise his affiliation with Evofi One and Prime Cap, two of Respondent's  
2 former employers, when no such affiliation currently exists.

3 **ORDER**

4 **NOW, THEREFORE, THE COMMISSIONER OF THE DIVISION HEREBY ORDERS,**  
5 pursuant to NRS 622.080 and NAC 645B.340, after having determined that Respondent  
6 engaged in activities for which Respondent does not have a license or certificate of  
7 exemption, in violation of Chapter 645B of NRS, that **RESPONDENT IMMEDIATELY CEASE**  
8 **AND DESIST** from the following activities:

9 1. Conducting any and all unlicensed mortgage broker and/or mortgage agent activity  
10 in the State of Nevada; and

11 2. Advertising for and soliciting mortgage broker and/or mortgage agent business in the  
12 State of Nevada, including his affiliation with any prior employer.

13 **IT IS FURTHER ORDERED,** pursuant to NAC 645B.340(4), that upon filing a verified  
14 petition with the Division within **thirty (30) days** of receipt of this Order to Cease and Desist,  
15 Respondent shall be entitled to a hearing with regards to the contents of this Order to Cease  
16 and Desist. Respondent is advised, however, that the provisions of this Order to Cease and  
17 desist are effective immediately upon Respondent being served therewith, whether or not  
18 Respondent requests a hearing.

19 Should Respondent request a hearing, Respondent is advised of the following:

20 a. Respondent is entitled to be represented by legal counsel at its own cost; b) At any  
21 hearing Respondent shall be entitled to respond and to present evidence and argument on all  
22 issues involved; c) Requests may be made to the Commissioner for the issuance of  
23 subpoenas; however, the Commissioner may request the proposed testimony of any such  
24 person prior to the issuance of the subpoena; and d) Unless precluded by law, the parties may  
25 agree to an informal resolution or settlement prior to any hearing.

26 If the Division prevails at any hearing, it may request that attorney's fees and costs, in the  
27 amount of \$641.50, to date, be awarded pursuant to NRS 622.400; the Division reserves the  
28 right to supplement these fees and costs.

1 IT IS FURTHER ORDERED, pursuant to NRS 645B.750, that upon written application to  
2 the Division **within twenty (20) days** of the date of this Order, Respondent shall be entitled to a  
3 hearing with regards to the contents of this Order referenced below. At that hearing the Division  
4 will seek to:

5 1. Impose an administrative fine against Respondent in the amount of Seven Thousand  
6 Five Hundred Dollars and No Cents (\$7,500.00) for Respondent's multiple violations of Chapter  
7 645B of NRS, the Division's investigative costs in the amount of Four Hundred Eighty Dollars  
8 and No Cents (\$480.000), as well as the Division's administrative costs and attorney's fees, if  
9 any, incurred herein, each to be proven at the hearing or upon the filing of a proper affidavit;  
10 and

11 2. Require Respondent's payment, in full, of the administrative fine, investigative costs,  
12 as well as the costs and fees to the Division, within thirty (30) days of entry of the Final order.

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

16 Dated this 23<sup>RD</sup> day of July, 2010.

17  
18 State of Nevada  
19 Department of Business and Industry  
20 Division of Mortgage Lending

21 By:   
22 Joseph L. Waltuch, Commissioner  
23  
24  
25  
26  
27  
28