FILED
APR 25 2011
APPEALS OFFICE

BEFORE THE HEARINGS OFFICER

In RE:

THE MAC GROUP, A SOLE PROPRIETORSHIP,

Claim No:

Appeal No: 83795-GS

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Mortgage Lending Division

DECISION AND ORDER

This matter came on before the Hearings Officer on the Mac Groups appeal from the Order to Cease and Desist, Notice of Intent to Revoke Independent Licensee License, Notice of Intent to Revoke Associated Licensee license, Notice of Intent to Impose Licensure Conditions, Notice of Intent to Impose Fine and Notice of Right to Request Hearing, hereinafter referred to as "Cease and Desist Order," issued by the State of Nevada, Department of Business and Industry, Division of Mortgage Lending, hereinafter referred to as the "Division." The Division was represented by Kali Fox Miller, Deputy Attorney General. The Mac Group was represented by Michael F. Bohn, Esq.

The Mac Group, a sole proprietorship, is owned by Marco Chaidez. Mr. Chaidez was present during the hearing and testified. Subsequent to the hearing, briefs were requested and were filed. The Hearing Officer requested the Regulations relied upon by the Division also be filed, however, to date the Regulations were not received. The Internet was utilized to review the Nevada Register of Administrative Regulations for the regulations that were adopted but not yet codified. The matter is considered submitted for decision as of April 22, 2011.

The Division filed documentary evidence and the documents were marked and entered into evidence as Agency Exhibit 1-3. The Mac Group also presented documentary evidence which was marked and entered into evidence as Exhibits A and B. Ms. Connie Clapham, the Examiner in Charge, testified on behalf of the Division.

The hearing was conducted pursuant to NRS Chapter 233B, NRS Chapter 645F and all applicable administrative regulations.

Following a review of the evidence and consideration of the testimony of the witnesses and arguments of counsel, the Hearings Officer renders the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Mac Group was licensed as a covered service provider and doing business in the State of Nevada. The business included performing services of loan modification or foreclosure consultant activity from the Las Vegas Office.

2. Ms. Connie Clapham, the examiner in charge, was a credible witness. She performed a regularly scheduled annual examination of the business in accordance to Section 63 of the adopted Regulation. She returned to the business and conducted further investigation when the Division received a call regarding activities at the MAC Group. Ms. Clapham testified to her findings which are contained in the report and in evidence as Agency Exhibit 2.

3. Ms. Clapham found numerous violations, including but not limited to, a change in the business location than the location on the license, employees not licensed performing duties as an associate licensee, and failure to reconcile trust accounts. There was also commingling of funds.

4. After Ms. Clapham completed her investigation, the rating for the MAC Group was a "5." This is the lowest rating based on compliance with applicable statutes and regulations. Due to rating of "5" the examiner recommended disciplinary action against the loan modification and foreclosure consultant to the Commissioner.

5. Ms. Clapham testified after she completed her initial investigation and the Division received a call regarding unlicensed activity, she returned to the Mac Group and was given a different list of employees. During this investigation, it was determined that Nick Lancetti was

not a licensed associate service provider and was conducting business from Staten Island, New York, but was using stationary with the Mac Group while conducting business.

6. Nick Lancetti, while operating in New York was conducting business in New York regarding property not located in the State of Nevada.

7. Employees, David Young (DY), Cathy Zora (CZ), Barbara Gouaille (BG), Minerva Young (MY) and Michael Kearns (MK) were conducting duties as covered service providers prior to being licensed. Ms. Clapham testified to the findings in the "Pipeline report" and listed employees performing duties while being unlicensed or with a license pending.

8. Michael Kearns was listed as a "Closer" but was not licensed and did not have a license pending. The initial list received from Marco Chaidez showed Mr. Kearns as working in the phone center.

9. Cathy Zora was contacting homeowners and lenders while not being licensed and David Young was responsible for a loan but was not licensed. These individuals were not just performing clerical work for which a license is not necessary.

9. Marco Chaidez testified he was licensed to conduct loan modifications. The Mac Group's business of loan modifications involved 98 to 99% properties outside the State of Nevada. He testified to 1 customer with property in the State of Nevada and he performed the loan modification work, not the other employees. The Mac Group has a call center where homeowners are contacted and asked if they are interested in loan modifications. He admitted the trust account was not reconciled, but he has since reconciled the accounts. He denied making payroll out of the trust account and stated he used an Operating account.

10. Any Finding of Fact which may be deemed a Conclusion of Law shall be so considered.

CONCLUSIONS OF LAW

1. NRS 645.010 *et.seq.* provides the statutory authority for regulation and supervision

of mortgage lending and related professions.

2. Regulations have been adopted for licensing for the licensing and regulation of foreclosure consultants, loan modification consultants and persons performing any covered service for compensation. The regulation includes the grounds and procedure for revocation, suspension and cease and desist orders. NRS 645F.390 and Regulation RO52-09.

3. The definition of covered service is contained at NRS 645F.310 and among other services includes financial counseling, receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a mortgage or other lien, contacting a creditor on behalf of a homeowner.

4. MAC Group employed individuals: Cathy Zora, David Young, Barbara Gouaille, Minerva Young and Michael Kearns who acted the capacity of a covered service provider, foreclosure consultant or loan modification consultant when they had not yet applied for or received a license by the Division. These individuals were not exempt from the licensing pursuant to the provisions of NRS Chapter 645F and the adopted Regulation.

5. The MAC group at the time of the investigation and prior to the Cease and Desist Order failed to reconcile the bank accounts.

6. The "Violation of Law" stated as number 2 in the Cease and Desist Order, involved the conduction of covered service provider, foreclosure consultant or loan modification consultant activities involving residential real property located in the State of Nevada from an unlicensed location in the State of New York. This section involved the conduction of business by Nick Lancetti, but was dismissed at the end of the hearing, as the evidence failed to prove the property was in the State of Nevada as was stated in the Cease and Desist Order.

7. The examination rating of "5" was proper in finding unsatisfactory compliance with applicable laws and regulations requiring remedial action. Adopted Regulation RO52-09 section 66.

8. A separate trust account and reconciliation of the balance is required. Adopted Regulation RO52-09 section 73.

9. There is nothing in the NRS 645F *et. seq.* or Regulation that requires the property to be in the State of Nevada or involve only Homeowners that are residents of the State of Nevada when the business conducting "covered services" as defined by NRS 645F.310 and the individuals working as Foreclosure Consultants or Loan Modification Consultants are conducting the business out of the office located in the State of Nevada. The Commissioner of the Division has the statutory authority to regulate the individuals conducting covered services. NRS 645F.390.

10. The Nevada State Legislature limited the licensing of loan servicing persons and institutions to those who; "conduct business in this State for the purpose of servicing mortgage loans secured by a lien on real property located in this State." NRS 645F.265. However, there is no such provision for the licensing of foreclosure consultants and loan modification consultants. NRS 645.300 to 645F.450.

11. The Regulations contemplates licensing of out of state offices of Nevada licensees. An applicant may apply for a license for an office or other place of business located outside the State of Nevada but must agree to make available at a location within this State, the books, accounts and files of the business located outside of this State. Regulation Section 19, paragraph 4.

11. Deference is given to an agency's interpretation of its own regulation is "controlling unless plainly erroneous or inconsistent with the regulation." Auer v. Robbins, 519 US 452 (1997).

12. The adopted Regulation allows the Division to impose an "administrative fine of not more than $10,000." The Division provided evidence MAC Group violated its regulation and the Division could impose an administrative fine of $10,000 for each violation. Regulation

section 103.

13. The Division adopted Regulation that provided the penalty for providing covered services without the proper licensing can be "pay restitution to any person who has suffered an economic loss as a result of a violation of the provisions of this chapter." The Division failed to provide evidence that individuals suffered economic loss and therefore restitution is not ordered at this time.

14. The Division proved the violations of law number 1 and 3 cited in the Cease and Desist Order by Substantial evidence. Regulation section 119.

14. Any Conclusion of Law which may be deemed a Finding of Fact shall be so considered.

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ORDER

IT IS ORDERED The Cease and Desist Order is affirmed and is proper due to the violation of law (1) in allowing employees to work in the capacity of covered service provider, foreclosure consultant or loan modification consultants without being licensed and (3) in the failure to reconcile the trust bank accounts.

IT IS FURTHER ORDERED the Order portions of the Cease and Desist Order are also affirmed except the administrative fine against the "Respondent" shall be in the amount of $20,000 for the two violations 1 and 3 and not $30,000.

IT IS SO ORDERED this 25th day of April, 2011.

GERALDINE H.SCHWARTZER, ESQ.
HEARINGS OFFICER

NOTICE: Pursuant to NRS 233B.130, should any party desire to appeal this final determination of the Hearings Officer, a Petition for Judicial Review must be filed with the District Court within 30 days after service by mail of this decision.