

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

Before the Commissioner of the Division of Mortgage Lending

In the Matter of:)
THE MILLENNIUM CONSULTING GROUP, INC.,)
Covered Service Provider License No. 3286,)
and)
KEN SARNA, PRESIDENT)
& SOLE SHAREHOLDER,)
Associated Covered Service Provider)
License No. 46611,)
Respondents.)

ORDER TO CEASE AND DESIST,
ORDER TO FILE REPORT,
AND
NOTICE OF OPPORTUNITY FOR HEARING

Issued and Entered,
This 10th day of January, 2012,
By James Westrin,
Commissioner

I.
ORDER TO CEASE AND DESIST VIOLATING NRS 645F.010 *et seq.*,
and
ORDER TO FILE REPORT

The Commissioner of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending (the "Commissioner") having been statutorily charged with the responsibility and authority to administer and enforce Chapter 645F of the Nevada Revised Statutes, NRS 645F.010 *et seq.*, and Chapter 645F of the Nevada Administrative Code, NAC 645F.001 *et seq.*, as amended by Adopted Permanent Regulation of the Commissioner of Mortgage Lending, R052-09, governing the licensing and conduct of covered service providers in the State of Nevada; and,

1 The Commissioner having been granted general supervisory power and control over all covered
2 service providers doing business in the State of Nevada pursuant to NRS 645F; and “Covered Service”
3 being defined by NRS 645F.310, to include, without limitation, as follows:

- 4 1. Financial counseling, including, without limitation, debt counseling
6 and budget counseling.
- 7 2. Receiving money for the purpose of distributing it to creditors in
8 payment or partial payment of any obligation secured by a mortgage or
9 other lien on a residence in foreclosure.
- 10 3. Contacting a creditor on behalf of a homeowner.
- 11 4. Arranging or attempting to arrange for an extension of the period
12 within which a homeowner may cure a default and reinstate an obligation
13 pursuant to a note, mortgage or deed of trust.
- 14 5. Arranging or attempting to arrange for any delay or postponement of
15 the time of a foreclosure sale of a residence in foreclosure.
- 16 6. Advising a homeowner regarding the filing of any document or
17 assisting in any manner in the preparation of any document for filing with
18 a bankruptcy court.
- 19 7. Giving any advice, explanation or instruction to a homeowner which
20 in any manner relates to the cure of a default in or the reinstatement of an
21 obligation secured by a mortgage or other lien on a residence, the full
22 satisfaction of the obligation, or the postponement or avoidance of a
23 foreclosure sale.
- 24 8. Arranging or conducting, or attempting to arrange or conduct, for a
25 homeowner any forensic loan audit or review or other audit or review of
26 loan documents.
- 27 9. Arranging or attempting to arrange for a homeowner the purchase by a
28 third party of the homeowner’s mortgage loan.

1 10. Arranging or attempting to arrange for a homeowner a reduction of
2 the principal of the homeowner's mortgage loan when such a mortgage
3 loan is held by or serviced by a third party.

4 11. Providing the services of a loan modification consultant.

6 12. Providing the services of a foreclosure consultant; and,

7 The Division having received a complaint against MILLENNIUM alleging that MILLENNIUM
8 was engaged in activities or practices that violate NRS 645F; and,

9 The Division staff having commenced a full and thorough investigation of such complaint
10 pursuant to NAC 645F.001 *et seq.*, as amended by § 63 of Adopted Permanent Regulation of the
11 Commissioner of Mortgage Lending, R052-09, and during such investigation determined that, as a
12 general business practice, MILLENNIUM claimed, demanded, charged, collected or received fees from
13 homeowners prior to successfully obtaining a covered service for the homeowner; and,

14 The Division staff having reported the results of its investigation to the Commissioner; and,

15 The Commissioner having reviewed the results of the investigation and made the following

16 FINDINGS OF FACT and CONCLUSIONS OF LAW:

17 **Findings of Fact**

18 1. THE MILLENNIUM CONSULTING GROUP, INC. (hereinafter, "MILLENNIUM") made
19 application for and was granted a license by the Commissioner as an independent covered service
20 provider licensee, License No. 3286, pursuant to provisions of NRS 645F, on December 15, 2009.

21 2. At all times pertinent herein, MILLENNIUM has been licensed by the Commissioner as an
22 independent covered service provider, pursuant to provisions of NRS 645F.

23 3. KEN SARNA (hereinafter, "SARNA") made application for and was granted a license by the
24 Commissioner as an associated covered service provider licensee, License No. 46611, pursuant to
25 provisions of NRS 645F, on December 16, 2009.

26 4. At all times pertinent herein, SARNA has been licensed by the Commissioner as an associated
27 covered service provider, pursuant to provisions of NRS 645F.

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1 5. As the sole officer, director and shareholder of MILLENNIUM, SARNA controls and is
2 responsible for the business practices of MILLENNIUM.

3 6. On September 6, 2011, the Division commenced an investigation of MILLENNIUM and
4 SARNA's (hereinafter, collectively, the "RESPONDENTS") business practices. During the course of
6 the investigation the Division determined the following:

7 a. RESPONDENTS are actively engaged in the business of a covered service provider. In
8 particular, RESPONDENTS are engaged in the business of assisting homeowners with negotiating short
9 sales and mortgage settlements with their lender or servicer.

10 b. In relation to its engagement to provide short sale and mortgage settlement negotiation
11 services to a homeowners' lender, RESPONDENTS enter into a "Short Sale Fee / Retainer Agreement"
12 (hereinafter, the "Agreement"). In this Agreement, RESPONDENTS agree to perform the following
13 services on behalf of a homeowner:

- 14 i. Initial consultation with the homeowner.
- 15 ii. Document review.
- 16 iii. Explain all short and long term risks associated with a short sale to a homeowner.
- 17 iv. Set expectations for each homeowner's unique situation.
- 18 v. Prepare the short sale package.
- 19 vi. Work with licensed real estate professionals who will list the property for sale on
20 the MLS in an attempt to generate offers which are reasonable based on the most
21 recent sales in the area.
- 22 vii. Once a reasonable offer is received, package, submit, facilitate and negotiate the
23 offer with the homeowner's current lien holder.
- 24 viii. Confirm receipt of all short sale documents with the homeowner's lender and
25 follow up to ensure the file is progressing.
- 26 ix. Negotiate and try to minimize homeowner's financial exposure (full deficiency
27 release not guaranteed).
- 28

1 c. In exchange for receiving these services, a homeowner is required to pay
2 RESPONDENTS as follows:

3 i. A fee of \$200.00 to be paid at the time of the consultation and execution of the
4 Agreement.

6 ii. Upon RESPONDENTS receiving an approval from a homeowner's mortgage
7 lender(s) for a short sale RESPONDENTS will seek payment from the seller of
8 an additional \$695.00 for services performed, unless the purchase agreement
9 stipulates the fee is to be paid by another party. If such party fails to make the
10 payment, the homeowner is responsible "to make this payment in full prior to
11 recording the transaction."

12 iii. If RESPONDENTS are successful in negotiating a deficiency waiver on behalf of
13 the homeowner, the homeowner will be required to pay RESPONDENTS an
14 additional \$1,500.00.

15 d. Since July 1, 2011, RESPONDENTS have entered into the above Agreement with, and
16 or accepted a \$200.00 fee (hereinafter, the "consultation fee") from, approximately 182 Nevada
17 homeowners.

18 7. NRS 645F.405 provides as follows:

19 A person who provides any covered service for compensation, a
20 foreclosure consultant and a loan modification consultant shall not claim,
21 demand, charge, collect or receive any compensation before a homeowner
22 has executed a written agreement with the lender or servicer incorporating
23 the offer of mortgage assistance obtained from the lender or servicer by
24 the person who performs any covered service for compensation, the
25 foreclosure consultant or the loan modification consultant.

26 8. The Commissioner is authorized pursuant to NAC 645F.001 *et seq.*, as amended by § 108 of
27 Adopted Permanent Regulation of the Commissioner of Mortgage Lending, R052-09 § 108 as follows:
28

1 Order

2 The Commissioner having formed the opinion based upon the foregoing that RESPONDENTS
3 are engaged in activity that violates NRS 645F.405, and concluded and determined that
4 RESPONDENTS shall be ordered to 1) cease and desist from violating NRS 645F.405 and 2) file a
6 report with the Commissioner concerning its business.

7 NOW, THEREFORE, IT IS ORDERED that RESPONDENTS shall immediately CEASE AND
8 DESIST from violating NRS 645F.405 by claiming, demanding, charging, collecting or receiving any
9 compensation before a homeowner has executed a written agreement with the lender or servicer
10 incorporating the offer of mortgage assistance obtained from the lender or servicer by RESPONDENTS.

11 IT IS FURTHER ORDERED that within five (5) calendar days of the effective date of this
12 ORDER, RESPONDENTS shall file with the Commissioner a REPORT of its business records and
13 activities. The REPORT shall be prepared in a spreadsheet format using Microsoft Excel. The
14 REPORT shall, at a minimum, provide 1) the name, address, and home and mobile telephone number of
15 each Nevada homeowner that paid RESPONDENTS an advance fee or entered into the Agreement with
16 RESPONDENTS since July 1, 2011 to present; 2) the date(s) that RESPONDENTS had contact with
17 the Nevada homeowner and description of the nature of such contact(s); 3) a description of the covered
18 service that the Agreement contemplated RESPONDENTS providing to the homeowner; 3) the amount
19 of compensation that each Nevada homeowner paid to RESPONDENTS and the date upon which it was
20 paid; 4) whether the RESPONDENTS were successful in obtaining an offer from the homeowner's
21 lender or servicer for a covered service; and 4) the final outcome of each Nevada homeowners'
22 Agreement. The REPORT shall be delivered to the Division in electronic format by electronic mail to
23 Tony Frascarelli, Chief Compliance Investigator at tfrascarelli@mld.nv.gov.

24 IT IS FURTHER ORDERED that an administrative hearing shall be scheduled in this matter
25 only if RESPONDENTS timely request an administrative hearing in accordance with the instructions
26 set forth in Section II of this ORDER entitled Notice of Opportunity for an Administrative Hearing. If
27 no administrative hearing is requested within 20 calendar days of the effective date of this ORDER,
28 RESPONDENTS' right to an administrative hearing shall be deemed waived and relinquished.

1 IT IS FURTHER ORDERED that this Order shall be and is effective and enforceable on the
2 date that it is issued and entered, as shown in the caption hereof.

3 IT IS FURTHER ORDERED that this Order shall remain effective and enforceable until
4 terminated, modified, set aside, or suspended in writing by the Commissioner.

6 IT IS FURTHER ORDERED that the Commissioner specifically retains jurisdiction over the
7 matters contained herein and has the authority to issue such further order(s) as he shall deem just,
8 necessary, and appropriate to enforce NRS 645F and protect the public.

9 IT IS SO ORDERED.

11 DIVISION OF MORTGAGE LENDING



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13 By _____
14 James Westrin, Commissioner

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1 II.

2 NOTICE OF OPPORTUNITY FOR AN ADMINISTRATIVE HEARING

3 NAC 645F.001 *et seq.*, as amended by § 108(4)-(5) of Adopted Permanent Regulation of the
4 Commissioner of Mortgage Lending, R052-09, provides as follows:

6 (4) Not later than 20 calendar days after receiving an order pursuant to
7 this section, the person who receives the order may file a verified petition
8 with the Commissioner to request a hearing. Upon receipt of the verified
9 petition, the Commissioner may, for good cause shown, suspend the order
10 pending the hearing. The Commissioner will hold the hearing on a date
11 not later than 30 calendar days after the date the petition is filed unless the
12 Commissioner and the person agree to another date. The order to cease
13 and desist is rescinded if the Commissioner fails to:

14 (a) Hold a hearing:

15 (1) Not later than 30 calendar days after the petition is filed; or

16 (2) On a date agreed to by the Commissioner and the person; or

17 (b) Render a written decision within 45 days after the hearing is
18 concluded.

19 (5) The decision of the Commissioner after a hearing is a final decision
20 of the Commissioner for the purposes of judicial review.
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22 If you wish to exercise your right to an opportunity for an administrative hearing, within 20
23 calendar days after receiving this Order, you must file a verified petition with the Commissioner to
24 request a hearing. The verified petition requesting a hearing must be delivered to:

25 Division of Mortgage Lending
26 Attn. Susan Slack
27 7220 Bermuda Road, Suite A
28 Las Vegas, Nevada 89119

If you fail to timely file a verified petition to request a hearing, your right to a hearing under
Section 108(4) will be deemed waived and relinquished.