

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:

DIVISION OF MORTGAGE LENDING,
Petitioner,

v.

AVTEK MORTGAGE, LLC
Mortgage Broker License No. 41,
Respondent.

Order No. 2012-24

CONSENT ORDER
TO CEASE AND DESIST VIOLATING NRS 645B
AND
TO PAY ADMINISTRATIVE FINE, ATTORNEYS FEES AND COSTS

Issued and Entered,
This 23rd day of October, 2012,
By James Westrin,
Commissioner

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 645B and Chapter 645E of the Nevada Revised Statutes, NRS 645B.010 *et seq.* and NRS 645E.010 *et seq.*, and Chapter 645B and Chapter 645E of the Nevada Administrative Code, NAC 645B.001 *et seq.* and NAC 645E.010 *et seq.*, governing the licensing and conduct of mortgage agents, mortgage brokers, and mortgage bankers in the State of Nevada; and,

The Commissioner having been granted general supervisory power and control over all mortgage agents, mortgage brokers, and mortgage bankers doing business in the State of Nevada pursuant to NRS 645B and NRS 645E; and,

1 Avtek Mortgage, LLC ("RESPONDENT"), a domestic limited liability company organized
2 under the laws of the State of Nevada having been licensed with the Division as mortgage broker
3 pursuant to NRS 645B at all times relevant to this matter and, therefore, subject to the jurisdiction of
4 the Commissioner; and,

5 RESPONDENT having an ownership interest of 51% held by Omar Nagy ("Nagy") and 49%
6 held by Fiona Brady ("Brady"); and,

7 Brady havin g made application for and been granted a license by the Commissioner as a
8 mortgage agent, License No. 46402, pursuant to NRS 645B, on September 21, 2009 and Brady having
9 served as RESPONDENT'S qualified employee from September 21, 2009 until present; and,

10 RESPONDENT having been licensed or required to be licensed with the Division of Mortgage
11 Lending (the "Division") as a mortgage broker pursuant to NRS 645B at all times relevant to this matter
12 and, therefore, subject to the jurisdiction of the Commissioner; and,

13 On April 14, 2011, the Division conducted an examination on Sahara Mortgage Corporation
14 ("Sahara"), a domestic corporation organized under the laws of the State of Nevada, licensed with the
15 Division as a mortgage banker pursuant to NRS 645E and therefore, subject to the jurisdiction of the
16 Commissioner; and,

17 The Division's examination having revealed the following:

18 1. Contrary to the requirements of NRS 645B.460, RESPONDENT failed to exercise
19 adequate supervision and control over its qualified employee, Brady, and its mortgage agents. Namely,
20 during the examination it was discovered that RESPONDENT'S qualified employee, Brady, from a
21 period beginning on or about September 1, 2010 and continuing until at least June 2, 2011, was
22 employed by and provided mortgage agent services to and on behalf of Sahara. During this same
23 period, and contrary to the prohibition against a mortgage agent being employed by more than one
24 mortgage broker or banker at a time set forth in NRS 645B.450(1), Brady continued to be employed by
25 and serve as the qualified employee for RESPONDENT.

26 2. In further demonstration of RESPONDENT'S lack of adequate supervision and control
27 over its qualified employee and mortgage agents, the examination and subsequent communications with
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1 RESPONDENT revealed that, although the majority shareholder and control person of RESPONDENT,
2 Nagy exercised minimal control or supervision of the RESPONDENT and entrusted the day to day and
3 overall business operation to Brady. RESPONDENT failed to implement or enforce policies, such as
4 quarterly management review, pre- and post-closing compliance audits, financial and accounting
5 reviews, or office visits, etc., to ensure that the business is being operated in compliance with applicable
6 law and in accordance with appropriate policies and procedures.

7 3. Contrary to the requirements of NRS 645B.085, RESPONDENT failed to timely submit
8 its annual financial statement for fiscal years 2008 through 2011.

9 RESPONDENT having been (1) served on or about June 30, 2011 and August 1, 2011, with a
10 notice of facts or conduct which warrant disciplinary action and (2) given an opportunity to show
11 compliance with all lawful requirements for the retention of the license, in accordance with NRS
12 233B.127(3); and,

13 The Commissioner having, based upon those findings, served upon RESPONDENT on or about
14 August 29, 2011, an Order to Cease and Desist, Notice of Intent to Revoke Mortgage Broker License,
15 Notice of Intent to Revoke Mortgage Agent License, Notice of Intent to Impose Fine, and Notice of
16 Right to Request Hearing (hereinafter, the "Order"); and,

17 RESPONDENT and Nagy having, thereafter, submitted additional information to the Division
18 concerning this matter and expressed a desire to cooperate with the Division, after formally contesting
19 the allegations, and to avoid the time and expense involved in a formal administrative enforcement
20 hearing; and,

21 The Division and RESPONDENT having conferred concerning this matter and determined to
22 resolve this matter pursuant to the following terms:

23 1. RESPONDENT agrees to CEASE AND DESIST from any violation of NRS 645B, as
24 set forth above;

25 2. RESPONDENT agrees that Brady must divest herself of any ownership interest in
26 RESPONDENT and RESPONDENT shall provide evidence of such divestiture to the Division within
27 forty five (45) days upon the entry of this order;

1 3. RESPONDENT agrees to hire a new Qualified Employee within 45 days of the date of
2 this order;

3 4. RESPONDENT and NAGY agree to develop and implement a program to monitor and
4 assure compliance with all state and federal laws and regulations pertaining to originating, brokering,
5 closing, and servicing mortgage loans, as applicable to RESPONDENT'S business. The program shall
6 include:

7 a. The development of a comprehensive Employee Procedures Manual clearly
8 delineating the mortgage loan process and all statutes, ordinances, rules, and regulations that govern the
9 activity of RESPONDENT'S employees.

10 b. The designation of a compliance officer, who can also be the qualified employee,
11 to conduct reviews, not less than quarterly, of a sample of RESPONDENT'S closed loans, and denied
12 and rejected loan applications and assure compliance with all state and federal laws. RESPONDENT
13 shall maintain written reports of the results of its file reviews. The written reports shall be maintained
14 in accordance with NAC 645B.077 and shall be available to Commissioner for review and examination.

15 5. RESPONDENT must file all financials, renewals, and monthly activity reports timely.

16 6. Nagy agrees to maintain an active role in RESPONDENT'S business transactions,
17 ensure that RESPONDENT is appropriately managed and that its qualified employees and mortgage
18 agents are being properly supervised and controlled.

19 7. RESPONDENT agrees to pay to the Division, in accordance with NRS 645B.670(2)(o)
20 and NRS 645B.670(2)(q) an Administrative Fine in the amount of Five Thousand Dollars and No Cents
21 (\$5,000.00) and shall be made in four (4) installments as follows:

22 a. Upon the entry of this order RESPONDENT shall pay Two Thousand Dollars
23 and No Cents (\$2,000.00);

24 b. The remaining Three Thousand Dollars and No Cents (\$3,000.00) shall be paid
25 in three (3) equal monthly installments in the amount of One Thousand Dollars and No Cents
26 (\$1,000.00) each;

27 c. The first installment shall be due on January 15, 2013;

1 d. The second installment shall be due on February 15, 2013;

2 e. The final installment shall be due on March 15, 2013;

3 In consideration of the Division's agreement to the above payment terms, RESPONDENT
4 agrees that if RESPONDENT fails to timely comply with the payment terms, and does not demonstrate
5 compliance at an information opportunity to show compliance conference offered to RESPONDENT in
6 accordance with NRS 233B.127, RESPONDENT voluntarily agrees to consent to the revocation of its
7 license and knowingly and voluntarily agree to waive and relinquish any right it may now or hereafter
8 have to: 1) an administrative hearing to contest the revocation of RESPONDENT'S license for failure
9 to comply with the terms of this order; 2) to judicial review of this order or a subsequent order revoking
10 RESPONDENT'S license for failure to comply with the terms of this order; and 3) to otherwise
11 challenge or contest in any manner or matter the basis, issuance, validity, effectiveness, or
12 enforceability of this order or a subsequent order revoking RESPONDENT'S license for failure to
13 comply with the terms of this order.

14 8. RESPONDENT agrees to pay to the Division, in accordance with NRS 622.400 and
15 upon the entry of this order, the Division's investigatory and other costs in the amount of Three
16 Hundred Dollars and No Cents (\$300.00);

17 9. RESPONDENT agrees to pay to the Division the Division's Attorney Fees, in
18 accordance with NRS 622.400 and upon the entry of this order, in the amount of Three Hundred Dollars
19 and No Cents (\$300.00);

20 10. RESPONDENT agrees to promptly and thoroughly respond to any request from the
21 Division for documents, testimony, or other requests for information related to any matter implied
22 herein and to provide complete and truthful testimony related thereto; and,

23 RESPONDENT, through NAGY, having knowingly and voluntarily affixed its signatures to the
24 attached VOLUNTARY CONSENT TO ENTRY OF CONSENT ORDER, incorporated herein by this
25 reference, has consented to the issuance of this CONSENT ORDER TO CEASE AND DESIST
26 VIOLATING NRS 645B AND TO PAY ADMINISTRATIVE FINE, ATTORNEY FEES AND
27 COSTS (the "Order") with the intent to be legally bound hereby, and has waived and relinquished any
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1 and all rights that RESPONDENT may now or hereafter have to an administrative hearing in this matter
2 or to judicial review of, or otherwise challenge or contest, the entry of this Order; and,

3 RESPONDENT having had opportunity to consult with legal counsel of its choosing concerning
4 this matter; and,

5 The Commissioner having determined that the terms of this ORDER are a reasonable resolution
6 of this matter and in the public interest.

7 NOW, THEREFORE, IT IS HEREBY ORDERED that:

8 1. RESPONDENT shall CEASE AND DESIST from violating NRS 645B.

9 2. RESPONDENT agrees that Brady shall divest herself of any ownership interest in
10 RESPONDENT and RESPONDENT shall provide evidence of such divestiture to the Division within
11 forty-five (45) days of the entry of this order.

12 3. RESPONDENT shall hire a new Qualified Employee within forty-five (45) days of the
13 entry of this order.

14 4. RESPONDENT and Nagy shall develop and implement a program to monitor and
15 assure compliance with all state and federal laws and regulations pertaining to originating, brokering,
16 closing, and servicing mortgage loans, as applicable to RESPONDENT'S business. The program will
17 include:

18 a. The development of a comprehensive Employee Procedures Manual clearly
19 delineating the mortgage loan process and all statutes, ordinances, rules, and regulations that govern the
20 activity of RESPONDENT'S employees.

21 b. The designation of a compliance officer, who can also be the qualified employee,
22 to conduct reviews, not less than quarterly, of a sample of RESPONDENT'S closed loans, and denied
23 and rejected loan applications and assure compliance with all state and federal laws. RESPONDENT
24 shall maintain written reports of the results of its file reviews. The written reports shall be maintained
25 in accordance with NAC 645B.077 and shall be available to commissioner for review and examination.

26 5. RESPONDENT shall file all financials, renewals, and monthly activity reports timely.

1 6. NAGY shall maintain an active role in RESPONDENT'S business transactions and
2 ensure that RESPONDENT is properly managed and that its qualified employees and mortgage agents
3 are being properly supervised and controlled.

4 7. RESPONDENT shall pay to the Division, in accordance with NRS 645B.670(2)(o) and
5 NRS 645B.670(2)(q) an Administrative Fine in the amount of Five Thousand Dollars and No Cents
6 (\$5,000.00). It is agreed that the Administrative Fine shall be made in four (4) installments as follows:

7 a. Upon the entry of this order RESPONDENT shall pay Two Thousand Dollars
8 and No Cents (\$2,000.00);

9 b. The remaining Three Thousand Dollars and No Cents (\$3,000.00) shall be paid
10 in three (3) equal monthly installments in the amount of One Thousand Dollars and No Cents
11 (\$1,000.00) each;

12 c. The first installment shall be paid on January 15, 2013;

13 d. The second installment shall be paid on February 15, 2013;

14 e. The final installment shall be paid on March 15, 2013;

15 8. RESPONDENT shall pay to the Division, upon the entry of this order, the Division's
16 investigatory and other costs an amount of Three Hundred Dollars and No Cents (\$300.00).

17 9. RESPONDENT shall pay to the Division, upon the entry of this order, the Division's
18 attorneys fees an amount of Three Hundred Fifty Dollars and No Cents (\$300.00).

19 10. RESPONDENT shall promptly respond to any request from the Division for documents,
20 testimony, or other requests for information related to any matter implied herein and to voluntarily
21 provide complete and truthful testimony related thereto.

22 11. This Order shall be and is effective and enforceable on the date that it is issued, as
23 shown in the caption hereof.

24 12. This Order shall remain effective and enforceable until terminated, modified, set aside,
25 or suspended in writing by the Commissioner.

1 13. The Commissioner specifically retains jurisdiction over the matters contained herein and
2 has the authority to issue such further order(s) as he shall deem just, necessary, and appropriate to
3 enforce the provisions of NRS 645B.010 et seq. and protect the public.

4 IT IS SO ORDERED.

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6 DIVISION OF MORTGAGE LENDING

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8 By _____
9 JAMES WESTRIN, COMMISSIONER