

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

In the Matter of:

STATE OF NEVADA DEPARTMENT OF
BUSINESS & INDUSTRY, DIVISION OF
MORTGAGE LENDING,

Petitioner,

and

ASPEN FINANCIAL SERVICES, LLC
Mr. Jeffrey B. Guinn, Qualified Employee,
Mortgage Broker License No. 427

Respondent.

Order No.: 2013-2

DECISION AND ORDER

ISSUE

The issue before the Hearing Officer is whether the Summary Suspension and Revocation of the Respondent's mortgage broker license (License No. 427) by James Westrin, the Commissioner of the Division of Mortgage Lending, Nevada Department of Business & Industry (the "Commissioner") was justified under Nevada Revised Statutes 645B.010 *et. seq.* (the "Act") and Nevada Administrative Code 645B.001 *et. seq.* (the Regulation") governing the licensing and conduct of mortgage brokers and mortgage agents in the State of Nevada") based on the allegations that the Respondent was insolvent, and, if so, whether the imposition of administrative costs against the Respondent in the amount of \$1,395.00 by the Commissioner of the Division of Mortgage Lending (the "Commissioner") pursuant to the Commissioner's Summary Suspension of License Order dated April 18, 2013 and the Notice of Intent to Issue and Enter Order Revoking Mortgage Broker License, Imposing Administrative Costs and Notice of Hearing dated April 18, (hereafter referred to as the "Commissioner's Order") was justified?

JURISDICTION AND PARTIES

This matter is properly before the Hearing Officer. Respondent is formed in the State of Nevada with the Nevada Secretary of State and at all times relevant hereto conducted business from its offices in Las Vegas, Nevada. Mr. Jeffrey B. Guinn ("Guinn"), the Qualified Employee, at all times relevant hereto has resided in the State of Nevada and conducts business in the City of Las Vegas, Nevada. The facts and circumstances giving rise to the instant proceedings are based on alleged violations of Chapter 645B of the Nevada Revised Statutes and Nevada Administrative Code, respectively, occurring within the State of Nevada. The Mortgage Lending Division of the Department of Business and Industry (the "Division"), through the Commissioner, has been statutorily charged with the responsibility and authority to administer and enforce the provisions of Chapter 645B of the Nevada Revised Statutes (see NRS 645B.010 *et. seq.*) and Chapter 645B of the Nevada Administrative Code (see NAC 645B.001, *et. seq.*). At the time of the hearing the Division was represented by Kali Fox Miller, Esq., Deputy Attorney General for the State of Nevada. Neither the Respondent nor his attorney appeared at the hearing.

DECISION

Based on the Findings of Fact and Conclusions of Law set forth herein, and based on the substantial evidence provided at the hearing, and further based on the fact that the Respondent failed to appear at the hearing, it is my decision that the Commissioner's summary suspension of the Respondent's mortgage broker license and the imposition of administrative costs in the amount of \$1,395 were justified based on the following:

A) Respondent was insolvent based on the Division's review of the Respondent's balance sheet as of December 31, 2012 which showed a negative net worth in the amount of (\$719,180). Further, the entry of a judgment on or about March 26, 2013 by the Eighth Judicial District Court

of the State of Nevada against Respondent and in favor of City National Bank, NA in the amount of \$7,905,658.37, resulted in a further decrease in the Respondent's net worth to (\$8,624,838). See Exhibit A.

B) As a result of Respondent's insolvency, Respondent's continued operation posed an imminent risk to the public welfare and created an emergency situation which required immediate action on the part of the Division, and summary suspension of the Respondent's mortgage broker license was necessary and appropriate. Further, the Commissioner's imposition of administrative costs against Respondent in the amount of \$1,395.00 was proper and appropriate under the circumstances.

C) The Respondent's failure to appear at the hearing constituted a default and justified the granting of the Division's motion for a directed verdict against Respondent based on a determination that all of the factual allegations set forth in the Complaint were true and correct.

FINDINGS OF FACT

1. Respondent made application for and was granted a mortgage broker license by the Commissioner, License No. 427, pursuant to the provisions of the Act, on July 1, 1995.

2. On or about March 26, 2013, a judgment was entered against Respondent by the Eighth Judicial District Court for the State of Nevada in favor of City National Bank, N.A. in the amount of \$7,905,658.37 and that as a result of a Writ of Execution and Writ of Garnishment in Aid of Execution to collect on the judgment, Respondent's accounts, including three trust accounts, were frozen.

3. On April 15, 2013, Division Staff commenced an investigation of Respondent's books and records.

4. Based upon the results of the investigation, Respondent's net worth as of 12-31-12 was (\$719,180). With the addition of the judgment liability, Respondent's net worth is (\$8,624,838).

5. Based upon the results of the investigation, Respondent is insolvent, its capital and assets have been impaired and Respondent cannot continue in business with safety to its customers.

CONCLUSIONS OF LAW

1. Respondent's failure to appear at the hearing justifies the Hearing Officer proceeding with the disposition of this case and allows the Hearing Officer to accept as true all of the allegations in the Complaint. NRS 622A.350 (1) and (2).

2. Respondent's insolvency constitutes a failure to conduct business in accordance with law pursuant to NRS 645B.670(2)(c).

3. Respondent's insolvency constitutes a violation of NRS 645(B).670(2)(a).

4. Respondent's failure to maintain a sufficient net worth is a violation of NRS 645B.115 and NRS 645B.670(2)(c).

5. Respondent's failure to maintain a safe financial condition results in Respondent not being able to continue in business with safety to its customers, in violation NRS 645(B).670(2)(d).

6. For each violation committed by Respondent, the Commissioner is permitted pursuant to NRS 645B.670(2) to impose upon the Respondent an administrative fine not to exceed \$25,000 and may suspend, revoke or place conditions upon the Respondent's license.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law and with good cause appearing therefor, it is hereby ORDERED that the Commissioner's summary suspension of the Respondent's mortgage broker license is hereby upheld, and further, that the imposition by the Commissioner of administrative costs against the Respondent in the amount of \$1,395 is hereby upheld.

SO ORDERED THIS 19th day of June, 2013.

STATE OF NEVADA
DEPARTMENT OF BUSINESS & INDUSTRY

By: 

Dean J. Gould, Esq., Hearing Officer
Department of Business and Industry
Division of Mortgage Lending
555 E. Washington Avenue, Suite 4900
Las Vegas, NV 89101
(702) 486-2756

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Department of Business and Industry, and that on June 21, 2013, I deposited in the U.S. mail, postage prepaid via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing, DECISION AND ORDER, addressed as follows:

JAMES WESTRIN, COMMISSIONER
Division of Mortgage Lending
State of Nevada, Department of Business and Industry
7220 Bermuda Road, Suite A
Las Vegas, NV 89119
Certified Receipt Number: 7009 2250 0001 8856 4933

KALI FOX MILLER, ESQ.
Deputy Attorney General
Nevada Office of Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
Certified Receipt Number: 7009 2250 0001 8856 4940

JEFFREY GUINN
Aspen Financial Services
7900 W. Sahara Ave.
Las Vegas, NV 89117
Certified Receipt Number: 7009 2250 0001 8856 4957

JOHN D. BAILEY, ESQ.
MARK D. HESIAK, ESQ.
Bailey Kennedy
8984 Spanish Ridge Ave.
Las Vegas, NV 89148
Certified Receipt Number: 7009 2250 0001 8856 4964

DATED this 21st day of June, 2013

B


Patty L. Walsh, Legal Secretary II