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: PAULETTE M. DYSTANT, Mortgage Agent License No. UNL, NMLS ID No. 205734, Respondent.	Order No.: 2014-133 Case No.: 2014-133

ORDER TO CEASE AND DESIST,
ORDER IMPOSING AN ADMINISTRATIVE FINE AND INVESTIGATIVE COSTS,
AND
NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE HEARING

Issued and Entered.
This 29th day of July, 2014
By James Westrin,
Commissioner

I.
ORDER TO CEASE AND DESIST
AND
ORDER IMPOSING AN ADMINISTRATIVE FINE AND INVESTIGATIVE COSTS

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 of the Nevada Revised Statutes, NRS 645B.010 *et seq.* (the "NRS 645B" or "Statute"), and Chapter 645B of the Nevada Administrative Code, NAC 645B.001 *et seq.* (the "Regulation"), governing the licensing and conduct of mortgage brokers and mortgage agents in the State of Nevada; and,

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

The Commissioner having been further vested with broad authority to conduct investigations to determine whether any person is violating or has violated any provision of the Statute or Regulation; and,

The Division of Mortgage Lending (the "Division") having received information indicating that PAULETTE M. DYSTANT (hereinafter "RESPONDENT") was engaged in activity requiring licensure as a mortgage agent under the Statute; and

The Division having conducted an investigation of the RESPONDENT pursuant to NRS 645B.060(2)(c), and determined, from that investigation, that RESPONDENT was engaged in activity requiring licensure as a mortgage agent under the Statute; and,

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

The Commissioner having reviewed the results of the investigation and makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

Findings of Fact

1. NRS 645B.400 prohibits a person from acting as or providing any of the services of a mortgage agent or otherwise engaging in, carrying on or holding himself or herself out as engaging in or carrying on the activities of a mortgage agent unless the person has a license as a mortgage agent pursuant to NRS 645B.410.

2. NRS 645B.900 prohibits a person from offering or providing any of the services of a mortgage broker or mortgage agent or otherwise engaging in, carrying on or holding himself or herself out as engaging in or carrying on the business of a mortgage broker or mortgage agent without first obtaining the applicable license issued pursuant to this chapter, unless the person is properly exempt from licensure.

3. NRS 645B.0125 defines a "mortgage agent" as follows:

1. "Mortgage agent" means:

(a) A natural person who:

(1) Is an employee of a mortgage broker or mortgage banker who is required to be licensed pursuant to this chapter or chapter 645E of NRS; and

(2) Is authorized by the mortgage broker or mortgage banker to engage in, on behalf of the mortgage broker or mortgage banker, any activity that would require the person, if the person were not an employee of the mortgage broker or mortgage banker, to be licensed as a mortgage broker or mortgage banker pursuant to this chapter or chapter 645E of NRS;

(b) A mortgage broker, qualified employee or mortgage banker who is required by NRS 645B.405 or 645E.290 to be licensed as a mortgage agent; or

(c) A loan processor who is an independent contractor and who is associated with a mortgage broker, mortgage banker or person who holds a certificate of exemption pursuant to NRS 645B.016.

2. The term includes, but is not limited to, a residential mortgage loan originator.

3. The term does not include a person who:

(a) Except as otherwise provided in paragraph (b) of subsection 1, is licensed as a mortgage broker or mortgage banker;

(b) Is an owner, general partner, officer or director of a mortgage broker or mortgage banker who does not engage in any activity that would otherwise require a license as a mortgage broker or mortgage banker;

(c) Except as otherwise provided in paragraph (c) of subsection 1, performs only clerical or ministerial tasks for a mortgage broker or mortgage banker; or

(d) Collects payments and performs related services, including, without limitation, the modification of an existing loan, in connection with a loan secured by a lien on real property and who does not undertake any other activity that would otherwise require a license pursuant to this chapter or chapter 645E or 645F of NRS.

4. NRS 645B.01325, in applicable part, defines a "residential mortgage loan originator" as follows:

> 'Residential mortgage loan originator' means a natural person who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or other pecuniary gain.

5. DHI Mortgage Company, Ltd. ("DHI") is a Nevada foreign limited partnership organized under the laws of Texas which is licensed in Nevada as a mortgage broker pursuant to the provisions of the Statute. DHI has a branch office located in Henderson, Nevada (MLD License No. 134, NMLS ID No. 14622). DHI also has California-licensed branch offices in Corona (Branch Office ID No. 183571) and Woodland Hills (Branch Office Id. No. 315263).

6. Diana Dibble ("Dibble"), a Nevada-licensed mortgage agent (MLD License No. 48563, NMLS ID No. 207155) was employed by DHI as a non-producing branch manager and Qualified Employee in its Corona branch office from approximately October 1, 2012 through October 31, 2013.

7. RESPONDENT was employed by DHI at its Woodland Hills location, first as a loan officer in approximately February 2004, and later as a branch supervisor, until on or about September 20, 2013.

8. On or about November 13, 2013, DHI contacted the Division to self-report facts indicating that RESPONDENT may have engaged in the services of a residential mortgage loan originator in Nevada in violation of the Statute. In particular, DHI reported the following:

a. That on September 10, 2013, DHI received a complaint from a borrower related to a residential mortgage loan obtained on real property in Reno, Nevada, alleging that certain terms of

the closing loan documents did not accurately reflect the actual terms and amounts as represented and to which the Complainant had agreed.

b. That as a result of this complaint, DHI reviewed the loan file and discovered that, while Dibble's name, signature, and NMLS license number, as well as Dibble's Corona, California business address was specified on the residential mortgage loan application, and that Dibble appeared in DHI's loan origination system as the mortgage loan originator, RESPONDENT was the agent who actually performed the origination activities related to the Complainant's loan in Nevada.

c. That thereafter, DHI further reviewed and audited all Nevada loan origination activities known to have been performed by RESPONDENT and Dibble in the Reno market, which revealed the existence of 17 residential mortgage loans subject of its investigation. DHI's audit documented that with respect to 15 of these loan files (including the loan described in the complaint received by DHI), while RESPONDENT performed the mortgage loan origination activities with respect to the residential property purchases in Nevada, Dibble, a licensed mortgage agent in Nevada, was identified on the respective loan origination documents and in DHI's loan origination system as the residential mortgage loan originator.

d. That DHI's review and audit further revealed that at least 8 files (six of which were originated by RESPONDENT and two originated by Dibble), reflected stated charges which pursuant to the Real Estate Settlement Procedures Act ("RESPA," 12 U.S.C. § 2601 *et seq.*), exceeded the permitted "tolerances" on the HUD-1 amount(s) by which charges at closing could vary from good faith estimates stated at the time of loan application.

9. The Division staff thereupon commenced an investigation of RESPONDENT'S business practices pursuant to NRS 645B.060(2)(c).

10. During the course of its investigation, the Division determined that RESPONDENT was actively engaged in activity requiring licensure as a mortgage agent under the Statute.

11. RESPONDENT is not currently and at no time relevant to this matter was licensed by the Commissioner to act as or provide any of the services of a mortgage agent in the State of Nevada.

12. The Division's investigation specifically revealed the following:

a. RESPONDENT was issued a California mortgage loan originator license on or about May 28, 2010 (NMLS ID No. 205734). She was employed in DHI's Woodland Hills, California branch office as a loan officer from approximately February 1, 2004 until on or about October 1, 2012, at which time she commenced service as branch supervisor, working in that capacity until DHI terminated her employment on or about September 20, 2013.

b. Dibble made application for and was granted a Nevada mortgage agent license by the Commissioner pursuant to the provision of the Act, on February 17, 2011 (MLD License No. 48563, NMLS ID No. 207155). At all times relevant to this matter, Dibble was licensed as a mortgage agent in Nevada under the Statute.

c. From approximately December 2, 2012 through July 29, 2013, as reflected in 15 DHI files respective to the loan origination activities related to Nevada residential properties, including conversation logs, commission reports, and EXCEL spreadsheets, RESPONDENT offered or provided the services of a mortgage agent, or otherwise engaged in or held herself out as engaging in or carrying on the business of a mortgage agent when she communicated with potential homebuyers of Nevada property, took residential mortgage loan applications, quoted rates, negotiated terms or residential mortgage loans for compensation, and locked in loans for borrowers as secured by the subject Nevada residential properties.

d. To further and facilitate her unlicensed activity, RESPONDENT utilized or colluded with Dibble to provide Dibble's name, signature, and loan originator identifier (NMLS ID No. 207155), as well as Dibble's Corona, California, business address, upon the loan origination documents, including uniform residential mortgage loan applications, for the purpose of representing that a Nevada licensed-individual was the acting mortgage loan originator in the respective transactions.

e. RESPONDENT further utilized or colluded with Dibble to secure RESPONDENT'S receipt of resulting commissions based upon RESPONDENT'S unlicensed activity in these transactions. DHI records reveal that, in her capacity as branch manager, Dibble altered or manually adjusted DHI's commission requests/reports in its payroll system so that RESPONDENT received commissions in the approximate total sum of $12,197.01 for the unlicensed activities.

f. Six of the loan files originated by RESPONDENT which contained RESPA violations were subsequently "cured" by DHI, who refunded to the affected borrowers, the approximate total sum of $5,983.50. DHI further refinanced, at no charge, the residential loan of the mortgagors whose complaint to DHI regarding RESPONDENT'S transactions prompted DHI's discovery of the unlicensed mortgage origination activities.

13. NAC 645B.515 vests in the Commissioner the authority to order a person engaging in activity in violation of the Statute or the Regulation to immediately cease and desist from engaging in the activity.

14. NRS 645B.690 requires the Commissioner to impose, for each violation, an administrative fine of not more than $50,000 on a person who offers or provides any of the services of mortgage broker or mortgage agent or otherwise engages in, carries on or holds himself or herself out as engaging in or carrying on the business of a mortgage broker or mortgage agent and, at the time the person was required to have a license pursuant to this chapter and the person did not have such a license.

15. Any finding of fact that may be deemed a conclusion of law shall be so construed.

Conclusions of Law

16. It is a violation of NRS 645B.400 and NRS 645B.900 for a person to offer or provide any of the services of a mortgage agent or otherwise to engage in, carry on or hold himself or herself out as engaging in or carrying on the business of a mortgage agent without first obtaining the applicable license issued pursuant to NRS 645B.

17. REPONDENT engaged in activities of conduct which requires licensure under the Statute, and, by not holding the required license, RESPONDENT has committed violations of NRS 645B.400 and 645B.900. In particular, by offering to provide, and negotiating to achieve residential loans secured by real property in Nevada, RESPONDENT held herself out for hire to serve as an agent for any person in an attempt to obtain a mortgage loan to be secured by a lien on the residential property.

18. By engaging in the above-described conduct, RESPONDENT engaged in unlicensed mortgage agent activity under the Statute.

19. The Commissioner is authorized pursuant to NAC 645B.515 to order a person to cease and desist from engaging in any activity that violates any provision of the Statute.

20. The Commissioner is required pursuant to NRS 645B.690 to impose, for each violation, an administrative fine of not more than $50,000 on a person who offers or provides any of the services of a mortgage agent or otherwise engages in, carries on or holds himself or herself out as engaging in or carrying on the business of a mortgage agent and, at the time the person was required to have a license pursuant to the Statute and the person did not have such a license.

21. Any conclusion of law that may be deemed a finding of fact shall be so construed.

Order

The Commissioner having determined based upon the foregoing that RESPONDENT has engaged in unlicensed activity in violation of NRS 645B:

THEREFORE, IT IS HEREBY ORDERED that PAULETTE M. DYSTANT shall:

a. Immediately CEASE AND DESIST from engaging in, or otherwise carrying on or holding herself out as engaging in or carrying on any activities that require licensure as a mortgage agent under the Statute.

b. Pay an ADMINISTRATIVE FINE in the amount of Nineteen-Thousand, Six-Hundred Ninety-Seven Dollars, and One Cent ($19,697.01) in accordance with NRS 645B.690. The ADMINISTRATIVE FINE shall be due and payable on the 30th day following the effective date of this order and shall be tendered to the Division in accordance with the attached wire transfer instructions.

c. Pay the Division's INVESTIGATIVE COSTS in the amount of Three-Hundred Thirty Dollars ($330.00), in accordance with NRS 622.400. The INVESTIGATIVE COSTS shall be due and payable on the 30th day following the effective date of this order and shall be tendered to the Division in accordance with the attached wire transfer instructions.

IT IS FURTHER ORDERED that an administrative hearing shall be scheduled in this matter **only** if RESPONDENT timely requests an administrative hearing in accordance with the instructions set forth in Section II of this ORDER entitled Notice of Opportunity for an Administrative Hearing. **If no**

administrative hearing is requested within 30 calendar days of the effective date of this Order RESPONDENTS shall be deemed to have waived and relinquished the right to an administrative hearing in this matter and a FINAL ORDER shall be issued in this matter.

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

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

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

IT IS SO ORDERED.

DIVISION OF MORTGAGE LENDING

By: _____
JAMES WESTRIN, COMMISSIONER

II.

NOTICE OF OPPORTUNITY FOR AN ADMINSITRATIVE HEARING

NAC 645B.515, provides as follows:

1. If a person engages in an activity in violation of the provisions of this chapter or chapter 645B of NRS, the Commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity.

2. The order to cease and desist must be in writing and must state that, in the opinion of the Commissioner, the person has engaged in an activity:

(a) For which the person has not received a license or certificate of exemption as required by chapter 645B of NRS; or

(b) In a manner that violates the provisions of this chapter or chapter 645B of NRS.

3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by chapter 645B of NRS after receiving the order unless the order is suspended or rescinded.

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

(a) Hold a hearing:

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

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

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

5. The decision of the Commissioner after a hearing is a final decision of the Division for the purposes of judicial review.

[Emphasis added.]

NRS 645B.750, provides as follows:

1. If the Commissioner enters an order taking any disciplinary action against a person or denying a person's application for a license, the Commissioner shall cause a written notice of the order to be served personally or sent by certified mail or telegram to the person.

2. Unless a hearing has already been conducted concerning the matter, the person, upon application, is entitled to a hearing. If the person does not make such an application **within 20 days** after the date of the initial order, the Commissioner shall enter a final order concerning the matter.

3. A person may appeal a final order of the Commissioner in accordance with the provisions of chapter 233B of NRS that apply to a contested case. [Emphasis added.]

If you wish to exercise your right to an opportunity for an administrative hearing, within 30 calendar days after receiving this Order, you must file a verified petition with the Commissioner to request a hearing.

The verified petition requesting a hearing must be delivered to:

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

If you fail to timely file a verified petition to request a hearing, your right to a hearing to contest this matter will be deemed waived and relinquished.

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending, and that on, July 30th, 2014, 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 ORDER TO CEASE AND DESIST, ORDER IMPOSING AN ADMINISTRATIVE FINE AND INVESTIGATIVE COSTS, AND NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE HEARING in the matter of PAULETTE M. DYSTANT, addressed as follows:

Paulette M. Dystant
487 Blue Lake Court
Simi Valley, CA 93065

Certified Receipt Number: 7009 2250 0001 8859 4572

DATED this 29th day of July, 2014

By: Susan Slack
Employee of the Division