

1 STATE OF NEVADA
2 DEPARTMENT OF BUSINESS AND INDUSTRY
3 DIVISION OF MORTGAGE LENDING
4 Before the Commissioner of the Division of Mortgage Lending
5

6)
7 In the Matter of:)

8 DIVISION OF MORTGAGE LENDING,)

9 Petitioner,)

Order No. 2014-131

10 v.)

Case No. 2014-131

11 DHI MORTGAGE COMPANY, LTD.,)

12 Mortgage Broker License No. 134,)

13 NMLS ID No. 14622,)

14 Respondent.)

15
16 CONSENT ORDER
17 TO CEASE AND DESIST VIOLATING NRS 645B
18 AND
19 TO PAY ADMINISTRATIVE FINE AND COSTS

20 Issued and Entered,
21 This 22nd day of August, 2014,
22 By James Westrin,
23 Commissioner

24 The Commissioner of the State of Nevada, Department of Business and Industry, Division of
25 Mortgage Lending (the "Commissioner") having been statutorily charged with the responsibility and
26 authority to administer and enforce Chapter 645B and Chapter 645E of the Nevada Revised Statutes,
27 NRS 645B.010 *et seq.* and NRS 645E.010 *et seq.*, and Chapter 645B and Chapter 645E of the Nevada
28 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,

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

4 On or about November 13, 2013, DHI MORTGAGE COMPANY, LTD. (“RESPONDENT”),
5 contacted the Division of Mortgage Lending (the “Division”) to self-report unlicensed activity
6 perpetrated by two persons who at all times relevant to this matter were employed by RESPONDENT:
7 (1) Diana I. Dibble (“Dibble”), who served as RESPONDENT’S designated Qualified Employee at its
8 Corona, California branch office (Branch ID No. 183571), and (2) Paulette M. Dystant (“Dystant”), who
9 served as a Mortgage Loan Originator and Branch Supervisor at RESPONDENT’S Woodland Hills,
10 California branch office (Branch ID No. 315263).

11 The Division staff having, thereafter, commenced an investigation of RESPONDENT’S conduct
12 pursuant to NRS 645B.060(2)(c) and from that investigation determined the following:

13 1. RESPONDENT is a Nevada foreign limited partnership organized under the laws of the
14 state of Texas. RESPONDENT made application for and was granted a Nevada mortgage broker
15 license by the Commissioner on or about March 22, 2004 and authorized to operate a branch office
16 located in Henderson, Nevada (MLD License No. 134, NMLS ID No. 14622).

17 2. At all times relevant to this matter, Dibble held a Nevada mortgage agent license (MLD
18 License No. 48563, NMLS ID No. 207155).

19 3. At no time relevant to this matter, did Dystant hold a Nevada mortgage agent license.

20 4. On September 10, 2013, RESPONDENT received a complaint from a borrower related
21 to a residential mortgage loan obtained on real property in Reno, Nevada, alleging that certain terms of
22 the closing loan documents did not accurately reflect the actual terms and amounts as represented and to
23 which the complainant had agreed. As result of this complaint, RESPONDENT reviewed the loan file
24 and discovered that, while Dibble’s name, signature and NMLS identification number, as well as
25 RESPONDENT’S Corona, California business address was specified on the residential loan application
26 (Form 1003), and that Dibble appeared in RESPONDENT’S loan origination system as the mortgage
27 loan originator, Dystant was the agent who actually performed the origination activities related to the
28 Complainant’s loan in Nevada.

1 5. RESPONDENT, thereafter, further reviewed and audited all Nevada loan origination
2 activities known to have been performed by Dibble and Dystant in the Reno market, which revealed the
3 existence of 17 residential mortgage loans subject of its investigation.

4 6. This review and audit of the Nevada loan origination activities of Dibble and Dystant,
5 including conversation logs, commission reports, and EXCEL spreadsheets related to those 17 files,
6 show that from approximately December 2, 2012 through July 29, 2013, with regard to 15 of the 17
7 Nevada loan files examined, Dystant communicated with potential borrowers, took residential mortgage
8 loan applications, quoted rates and negotiated terms of residential mortgage loans for compensation,
9 and locked in loans for borrowers related to Nevada residential properties. The records further reflect
10 that in her capacity as branch manager, Dibble altered or manually adjusted RESPONDENT'S
11 commission requests/reports in its payroll system so that (following unquestioned approval of the
12 commission requests/reports by a regional manager), Dystant received commissions in the approximate
13 total amount of \$12,197.01, compensation of which she would not have otherwise been issued.

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

19 8. Nevada law requires that any natural person who conducts mortgage broker or mortgage
20 banker activity on behalf of a mortgage broker or mortgage banker, including conducting activity as a
21 residential mortgage loan originator, must be properly licensed by the Division in order to engage in the
22 activities of a mortgage agent. NRS 645B.400, 645B.900, NRS 645B.0125, NRS 645B.01325.

23 9. RESPONDENT, as a licensed mortgage broker in the state of Nevada, has a duty to
24 exercise reasonable care and skill in performing any act for which the mortgage broker is required to be
25 licensed under NRS 645B. NRS 645B.670(1)(b)(2). This would include a duty to exercise reasonable
26 care and skill in not only implementing, but maintaining and enforcing effective policies, rules,
27 procedures, or systems relative to the licensing and training of its mortgage agents; the auditing of
28 offices and mortgage transactions; and the quality control of its payroll/compensation mechanisms to

1 ensure compliance with Nevada mortgage licensing requirements. Nevada law also requires a mortgage
2 broker to exercise reasonable supervision and control over the activities of his or her mortgage agents
3 (including any designated Qualified Employee, branch manager, or regional manager), which must
4 encompass the establishment of written policies and procedures for the mortgage agents, and a system
5 to review, oversee and inspect the activities of such agents. NRS 645B.460(1). In determining whether
6 a mortgage broker has maintained adequate supervision of a mortgage agent, the Commissioner will
7 consider the factors as stated in NAC 645B.310.

8 10. Although RESPONDENT had stated policies and procedures mandating compliance
9 with all laws and regulations with regard to mortgage lending (including those passed/promulgated by
10 any state) and policies and procedures governing monthly audits of loans and branch offices as well as a
11 training policy for new employees and on-going annual training, those policies and procedures were
12 insufficient to detect the actions of Dibble and Dystant over an 8-month period from December, 2012
13 through July, 2013.

14 11. A mortgage broker's failure to adequately supervise and oversee the conduct and
15 activities of its mortgage agents or the activities conducted at its branch office locations, subjects the
16 mortgage broker to an administrative fine of not more than \$25,000 for each violation, as well as
17 suspension or revocation of the broker's license. NRS 645B.670(1)(b)(2), NRS 645B.670(1)(b)(3),
18 NRS 645B.670(1)(b)(16) and NRS 645B.670(1)(b)(17).

19 12. RESPONDENT'S stated policies and procedures were insufficient to detect the improper
20 conduct of Dibble and Dystant, such that in at least 15 separate loan files over an approximate 8-month
21 period, unlicensed residential mortgage loan origination occurred in violation of NRS 645B.400 and
22 NRS 645B.900 and improper commissions were paid to the benefit of Dystant.

23 13. RESPONDENT cooperated with the Division's investigation and represented that upon
24 discovering the unlicensed activities, it had not only undertaken a complete audit of all loans related to
25 the unlicensed Nevada origination activities known to have been performed by Dibble and Dystant
26 which revealed the existence of 17 residential mortgage loans subject of the RESPONDENT'S
27 investigation, but that RESPONDENT had secured the termination of Dystant and resignation of
28 Dibble; refunded the approximate total sum of \$14,812.70 to the mortgagors subject of the foregoing

1 described loans in order to “cure” the stated RESPA violations; and refinanced, at no charge, the
2 residential loan to mortgagors PS and TS, whose complaint to RESPONDENT concerning Dystant’s
3 transactions prompted RESPONDENT’S discovery of Dystant’s unlicensed mortgage loan origination
4 activities and Dibble’s misconduct in the direction, furtherance, or facilitation thereof.

5 14. RESPONDENT explained that that while the regional manager who approved Dibble’s
6 “inappropriately” made manual adjustments to the requests/reports by which commissions are generated
7 was “no longer with DHI Mortgage,” it had “communicated with the new Regional Manager the
8 importance of insuring that any variances must be addressed to insure that any adjustments are reviewed to
9 insure they are not related to un-licensable activity and are consisted with all MLO regulatory
10 compensation requirements.”

11 15. RESPONDENT further represented that in order to prevent unlawful licensure activities
12 and ensure compliance with state laws, it is developing additional mandatory training for both its
13 unlicensed loan officer assistants and licensed mortgage loan originators who will be required to certify
14 their review and understanding of RESPONDENT’S training materials on a quarterly basis.

15 RESPONDENT and the Division conferred concerning this matter and determined to resolve
16 this matter pursuant to the following terms:

17 1. RESPONDENT agrees to CEASE AND DESIST from any and all violations of NRS
18 645B.460(1)(b) as alleged above and will not offer or provide any residential mortgage loan origination
19 services by an agent not licensed to engage in such activities;

20 2. RESPONDENT further agrees to develop, implement, and maintain written policies and
21 procedures in addition to its existing policies and procedures, and establish a pre and post-closing
22 quality control program designed to ensure that Nevada loans are originated only by Nevada-licensed
23 mortgage agents from Nevada-licensed branch locations. This quality-control program shall, at a
24 minimum, require:

- 25 a. A review, on at least a quarterly basis, of at least 10% of the Nevada loan
26 applications originated, and all related documents and records, to ensure that the loan
27 was originated by a Nevada-licensed mortgage agent at a Nevada-licensed branch
28 office.

- 1 b. That the results of such review be documented in a quality-control report.
- 2 c. That the quality-control reports of such reviews be maintained for at least *four years*
- 3 from the date of the review and be available for inspection and examination by the
- 4 Commissioner or his designee.

5 3. RESPONDENT agrees to pay to the Division an ADMINISTRATIVE FINE in the total

6 amount of \$7,500.00 pursuant to NRS 645B.670(1)(b)(2), NRS 645B.670(1)(b)(3), and NRS

7 645B.670(1)(b)(17);

8 4. RESPONDENT agrees to pay to the Division the Division's ADMINISTRATIVE

9 COSTS and other costs in the amount of \$2,790.00, in accordance with NRS 622.400; and

10 RESPONDENT, having knowingly and voluntarily affixed its signature to the attached

11 VOLUNTARY CONSENT TO ENTRY OF COMMISSIONER'S ORDER, incorporated herein by

12 reference, has consented to the issuance of this CONSENT ORDER TO CEASE AND DESIST FROM

13 VIOLATING NRS 645B AND TO PAY ADMINISTRATIVE FINE AND COSTS (the "Order") with

14 the intent to be legally bound hereby, and has waived and relinquished any and all rights that

15 RESPONDENT may now or hereafter have to be served with a notice of charges and an administrative

16 hearing in this matter or to judicial review of, or otherwise challenge or contest, the entry of this Order;

17 and,

18 RESPONDENT, having had opportunity to consult with legal counsel of its choosing

19 concerning this matter; and,

20 The Commissioner having determined that the terms of this Order are a reasonable resolution of

21 this matter and in the public interest.

22 NOW IT IS HEREBY ORDERED that:

23 1. RESPONDENT shall CEASE and DESIST from any and all violations of NRS 645B

24 and shall exercise reasonable supervision and control over its staff to ensure compliance with Nevada

25 law.

26 2. RESPONDENT shall develop, implement, and maintain both a pre and post-closing

27 quality-control program which meets or exceeds the requirements set forth in Paragraph No. 2, Page 6,

28 above.

