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. DHI MORTGAGE COMPANY, LTD., Mortgage Broker License No. 134, NMLS ID No. 14622, Respondent.	Order No. 2014-131 Case No. 2014-131

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

Issued and Entered,
This 22nd day of August, 2014,
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,

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

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

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

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

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

4. On September 10, 2013, RESPONDENT 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. As result of this complaint, RESPONDENT reviewed the loan file and discovered that, while Dibble's name, signature and NMLS identification number, as well as RESPONDENT'S Corona, California business address was specified on the residential loan application (Form 1003), and that Dibble appeared in RESPONDENT'S loan origination system as the mortgage loan originator, Dystant was the agent who actually performed the origination activities related to the Complainant's loan in Nevada.

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

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

7. RESPONDENT'S review and audit further revealed that at least 8 files (six of which were originated by Dystant 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. That the results of such review be documented in a quality-control report.

c. That the quality-control reports of such reviews be maintained for at least *four years* from the date of the review and be available for inspection and examination by the Commissioner or his designee.

3. RESPONDENT agrees to pay to the Division an ADMINISTRATIVE FINE in the total amount of $7,500.00 pursuant to NRS 645B.670(1)(b)(2), NRS 645B.670(1)(b)(3), and NRS 645B.670(1)(b)(17);

4. RESPONDENT agrees to pay to the Division the Division's ADMINISTRATIVE COSTS and other costs in the amount of $2,790.00, in accordance with NRS 622.400; and

RESPONDENT, having knowingly and voluntarily affixed its signature to the attached VOLUNTARY CONSENT TO ENTRY OF COMMISSIONER'S ORDER, incorporated herein by reference, has consented to the issuance of this CONSENT ORDER TO CEASE AND DESIST FROM VIOLATING NRS 645B AND TO PAY ADMINISTRATIVE FINE AND COSTS (the "Order") with the intent to be legally bound hereby, and has waived and relinquished any and all rights that RESPONDENT may now or hereafter have to be served with a notice of charges and an administrative hearing in this matter or to judicial review of, or otherwise challenge or contest, the entry of this Order; and,

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

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

NOW IT IS HEREBY ORDERED that:

1. RESPONDENT shall CEASE and DESIST from any and all violations of NRS 645B and shall exercise reasonable supervision and control over its staff to ensure compliance with Nevada law.

2. RESPONDENT shall develop, implement, and maintain both a pre and post-closing quality-control program which meets or exceeds the requirements set forth in Paragraph No. 2, Page 6, above.

3. RESPONDENT shall pay to the Division an ADMINISTRATIVE FINE in the amount of $7,500.00. The ADMINISTRATIVE FINE shall be and is due upon RESPONDENT'S execution of the attached Voluntary Consent and shall be tendered to the Division in accordance with the attached invoice and wire transfer instructions.

4. RESPONDENT shall pay to the Division, upon entry of this Order, the Division's ADMINISTRATIVE COSTS and other costs in the amount of $2,790.00. The ADMINISTRATIVE COSTS and other costs shall be and are due upon RESPONDENT'S execution of the attached Voluntary Consent and shall be tendered to the Division with the ADMINISTRATIVE FINE described above in accordance with the attached invoice and wire transfer instructions.

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

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

7. 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 the provisions of NRS 645B.010 *et seq*. and protect the public.

IT IS SO ORDERED.

DIVISION OF MORTGAGE LENDING

By: James Westrin

JAMES WESTRIN, COMMISSIONER

Dated: 8/22/14

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, August 25TH, 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 CONSENT ORDER TO CEASE VIOLATING NRS 645B AND TO PAY ADMINISTRATIVE FINE AND COSTS in the matter of DHI MORTGAGE COMPANY, LTD., addressed as follows:

Carolyn Bertelson, Vice President
National Resolutions Manager
DHI Mortgage Company, Ltd.
10700 Pecan Park Blvd., Suite 450
Austin, TX 78750

Certified Receipt Number: 7009 2250 0001 8859 4688

DATED this 22nd day of August, 2014

By: Susan Slack
Employee of the Division