

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:

KELLY MORTGAGE AND REALTY, INC.,
Mortgage Broker License No. 2897,
NMLS ID No. 3160,

and

TRACY L. KELLY, Owner,
Mortgage Agent License No. 49053,
NMLS ID No. 24660,

Respondents.

Order No. 2015-036

Case No. 2015-036

FINAL ORDER
TO IMPOSE ADMINISTRATIVE FINE AND ASSESS INVESTIGATIVE COSTS

Issued and Entered,
This 20th day of July, 2016,
By James Westrip,
Commissioner

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

WHEREAS, on June 24, 2016, the Commissioner issued to Respondents at their California office, NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE FINE AND ASSESS INVESTIGATIVE COSTS AND NOTICE OF OPPORTUNITY FOR HEARING (the "Notice") attached hereto as Exhibit 1 and incorporated herein by this reference; and,

EXHIBIT 1

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 In the Matter of:)

6 KELLY MORTGAGE AND REALTY, INC.,)
7 Mortgage Broker License No. 2897,)
8 NMLS ID No. 3160,)

Order No.

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9 and)

10 TRACY L. KELLY, Owner,)
11 Mortgage Agent License No. 49053,)
12 NMLS ID No. 24660,)

13 Respondents.)

14 NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE FINE
15 AND
16 ASSESS INVESTIGATIVE COSTS
17 AND
18 NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE HEARING

19 The Commissioner of the State of Nevada, Department of Business and Industry, Division of
20 Mortgage Lending (the "Commissioner") is statutorily charged with the responsibility and authority to
21 administer and enforce Chapter 645B of the Nevada Revised Statutes, 645B.010 *et seq.* ("NRS 645B"
22 or the "Statute"), and Chapter 645B of the Nevada Administrative Code, NAC 645B.001 *et seq.*
23 ("NAC 645B" or the "Regulation"), governing the licensing and conduct of mortgage brokers and
24 mortgage agents in the State of Nevada; and,

25 The Commissioner is granted general supervisory power and control and administrative
26 enforcement authority over all mortgage brokers and mortgage agents doing business in the State of
27 Nevada pursuant to the Statute and Regulation; and,
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1 Pursuant to that statutory authority and responsibility vested in the Commissioner, Notice is
2 hereby provided to KELLY MORTGAGE AND REALTY, INC. ("KMR") and TRACY L. KELLY
3 ("KELLY") (collectively, "RESPONDENTS"), to give RESPONDENTS notice of the facts or conduct
4 which, if true, will result in the issuance and entry of a final order imposing an administrative fine and
5 assessing investigative costs against RESPONDENTS. **Notice is further provided to inform**
6 **RESPONDENTS that prior to the issuance and entry of such order, RESPONDENTS are entitled**
7 **to an administrative hearing to contest this matter if RESPONDENTS timely file a written**
8 **application for an administrative hearing in accordance with the instructions set forth in Section**
9 **III of this Notice.**

11 I.

12 FACTUAL ALLEGATIONS

13 1. At all times relevant to this matter, KMR held a mortgage broker license under
14 NRS 645B (License No. 2897, NMLS ID No. 3160) and is therefore, subject to the jurisdiction of the
15 Commissioner.
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17 2. At all times relevant to this matter, KELLY held a mortgage agent license under
18 NRS 645B (License No. 49053, NMLS ID No. 24660) and is therefore, subject to the jurisdiction of the
19 Commissioner.
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21 3. KELLY is KMR'S owner.

22 4. RESPONDENTS closed at least six loans during the time period of September 2014 to
23 April 2015.

24 5. A mortgage broker is required to submit a monthly report to the Commissioner which
25 specifies either the volume of loans arranged by the mortgage broker in the previous month or that no
26 loans were arranged ("Monthly Activity Report") in accordance with NRS 645B.080(2)(a). Monthly
27 Activity Reports are due by the 15th day of the month following the month for which the report is made.
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1 6. RESPONDENTS failed to identify the volume of loans arranged on monthly activity
2 reports submitted for September 2014, October 2014, December 2014, March 2015 and April 2015.

3 7. RESPONDENTS' failure to submit to the Commissioner accurate monthly reports for
4 September 2014, October 2014, December 2014, March 2015 and April 2015 is a violation of
5 NRS 645B.080(2)(a).

6 8. The Division advised RESPONDENTS to correct those monthly activity reports to
7 accurately reflect the volume of loans arranged by KMR.

8 9. RESPONDENTS failed to submit corrected monthly activity reports to the
9 Commissioner within a reasonable time.

10 10. NRS 645B.670(1)(b)(9) provides that it is grounds for discipline if a mortgage broker
11 refuses to permit an examination by the Commissioner of its books and affairs or has refused or failed,
12 within a reasonable time, to furnish any information or make any report that may be required by the
13 Commissioner pursuant to the provisions of the Statute or Regulation.

14 11. RESPONDENTS' refusal or failure, within a reasonable time, to furnish to the
15 Commissioner corrected monthly reports for September 2014, October 2014, December 2014,
16 March 2015, and April 2015 is a violation of NRS 645B.670(1)(b)(9).

17 12. NRS 645B.670(1)(b)(5) provides that it is grounds for discipline if a mortgage broker
18 has made a material misrepresentation in connection with any transaction governed by NRS 645B.

19 13. RESPONDENTS' false representations to the Division that it had not arranged or closed
20 any loans between September 2014 and April 2015 is a violation of NRS 645B.670(1)(b)(5).

21 14. RESPONDENTS' violations of the Statute subject it to an administrative fine pursuant
22 to NRS 645B.670(1)(b) and payment of investigative costs pursuant to NRS 622.400.
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II.

NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE FINE
AND ASSESS INVESTIGATIVE COSTS

Based upon the factual allegations set forth in Section I, above, and as provided in the Notice, RESPONDENTS are hereby given notice that it is the intent of the Commissioner to issue and enter a final order against RESPONDENTS imposing, jointly and severally, an administrative fine of \$5,000 and investigative costs of \$3,765. Prior to the issuance and entry of such order, RESPONDENTS are entitled to an opportunity for administrative hearing to contest the matter if RESPONDENTS timely make written application for such hearing in accordance with the instructions set forth in Section III below.

III.

NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE HEARING

If RESPONDENTS wish to exercise their right to an opportunity for an administrative hearing, RESPONDENTS must make an application to the Commissioner requesting an administrative hearing within 20 calendar days after the date of this Notice. The application requesting a hearing must be delivered to:

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

If RESPONDENTS fail to timely file an application requesting a hearing, RESPONDENTS' right to a hearing will be deemed waived and relinquished and a final order will be issued and entered in this matter.

DIVISION OF MORTGAGE LENDING

By: 
NANCY CORBIN DEPUTY COMMISSIONER

Dated: June 24, 2016

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

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REQUEST FOR INFORMAL CONFERENCE OR HEARING

I, _____ hereby request an informal conference or contested case hearing, as applicable, in the above-captioned matter.

CONTACT INFORMATION

(Provide contact information and check as applicable)

Home address: _____

Mailing address: _____

Home Phone: _____

Mobile Phone: _____

Office Phone: _____

E-mail Address: _____

COUNSEL CONTACT INFORMATION

Name of Counsel: _____

Address: _____

Office Phone: _____

E-mail Address: _____

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_____ I **am not** represented by counsel and direct all documents and correspondence regarding this matter to be sent to me at the address represented above.

_____ I am represented by counsel and direct all documents and correspondence regarding this matter to be sent to my counsel of record at the address provided above. (Attorneys must attach and file an appearance with this response.)

Respectfully Submitted,
