

1 **BEFORE THE DEPARTMENT OF BUSINESS & INDUSTRY**
2 **LAS VEGAS, NEVADA**

3
4 IN THE MATTER OF:)
5 MORTGAGE LENDING DIVISION,)
6 Claimant,)
7 v.)
8 B&F-C, LLC d/b/a/ 1-2-3 MORTGAGE,)
9 Mortgage Broker License No. 4006,)
10 NMLS ID No. 1098837,)
11 and)
12 FRANK ALBERT CURTIS, III,)
13 Qualified Employee,)
14 Mortgage Agent License No. 14112,)
15 NMLS ID No. 305127,)
16 Respondents.)

MLD Case No.: 2015-11

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

17 This is a contested case between Claimant, the Mortgage Lending Division
18 (MLD), and Respondents, B&F-C, LLC d/b/a 1-2-3 Mortgage (1-2-3 Mortgage) and
19 Frank Albert Curtis, III (Curtis). MLD alleges that Respondents violated multiple
20 provisions of Nevada law and seeks the revocation of their licenses, the imposition of
21 fines, and the recovery of investigative costs incurred in bringing this action.

22 **I. PROCEDURAL HISTORY**

23 MLD commenced this action with the filing on January 5, 2016, of a Notice of
24 Intent to Issue Order Revoking Mortgage Broker License, Revoking Mortgage Agent
25 License, Imposing Administrative Fine, and Requiring Payment of Administrative
26 Costs and Notice of Opportunity for Hearing (Notice of Intent). In the Notice of Intent,
27 MLD accused Respondents of violating NRS 645B.900 by acting as a mortgage
28 broker without being licensed as a mortgage broker (Count I), violating NRS 645B.080
by failing to submit accurate monthly reports of activity and reports of condition
(Counts II-IV), and violating NRS 645B.670 by failing to exercise the reasonable care

1 required of a reasonably prudent and professional mortgage broker (Counts V-VII).
2 The Division sought revocation of 1-2-3 Mortgage's broker license and Curtis's agent
3 license, imposition of a \$125,000 administrative fine, and recovery of \$4,785 in
4 administrative costs incurred during the investigation and presentation of this case.

5 Respondents submitted a Verified Petition Requesting an Administrative
6 Hearing on January 22, 2016. The Verified Petition was submitted in accordance with
7 NRS 645B.750(2). At this time, Respondents were represented by counsel.

8 On February 11, 2016, MLD filed its Complaint against Respondents,
9 incorporating the accusations as set forth in the Notice of Intent.

10 Also on February 11, 2016, the Commissioner of MLD disqualified himself from
11 the proceedings pursuant to NRS 233B.122 and referred this matter to the
12 undersigned Administrative Law Judge for hearing.

13 On February 16, 2016, an Order for Pre-Hearing Conference was issued,
14 scheduling a conference for March 30, 2016.

15 On March 31, 2016, an Order Scheduling Discovery and Status Check was
16 issued, providing the parties 60 days in which to exchange documentation and
17 prepare a joint evidentiary packet for purposes of the hearing.

18 On June 3, 2016, an Order Setting Hearing was issued, scheduling a hearing
19 for August 22, 2016.

20 On July 26, 2016, an Order Continuing Hearing Date was issued following a
21 request by the parties. The hearing date was continued to September 20, 2016.

22 On September 6, 2016, MLD's Confidential Hearing Brief was submitted.

23 On September 16, 2016, an Order Re-Setting Hearing Date was issued,
24 continuing the hearing date to September 29, 2016.

25 On approximately September 22, 2016, Respondents' counsel withdrew from
26 representation.

27 On September 26, 2016, a Procedural Order was issued, continuing the
28 hearing date to October 10, 2016, to allow Respondents time to prepare for their

1 defense in proper person. The Procedural Order further denied MLD's request to
2 enforce a settlement agreement that counsel for both parties had reached prior to
3 Respondents' counsel's withdrawal. Finally, the Procedural Order denied MLD's
4 request to prohibit Respondents from conducting licensed activity between September
5 29, 2016, and October 10, 2016.

6 On October 5, 2016, a Procedural Order was issued, continuing the hearing
7 date to October 24, 2016, following Respondents' disclosure to the tribunal that his
8 former attorney had not provided him with copies of MLD's exhibits and witness lists
9 nor copies of Respondents' exhibits and witness lists. Counsel for MLD provided
10 copies of all documents to Curtis personally, and Respondents were afforded two
11 weeks to review those documents in advance of the hearing.

12 This matter proceeded to hearing on October 24, 2016. At the hearing, MLD
13 called Eric Posin, Diana Martinez, and Curtis as witnesses. Both parties received a
14 full and fair opportunity to examine and cross-examine all witnesses. Both parties also
15 received a full and fair opportunity to present evidence and rebuttal evidence in their
16 favor. The parties stipulated to the admission of all exhibits disclosed prior to the
17 hearing. MLD Exhibits X and Y were introduced at the hearing and admitted without
18 objection. At the close of testimony, the parties reached a partial settlement. The
19 parties stipulated to the revocation of Respondents' broker and agent licenses, and
20 MLD agreed to reduce its request for an administrative fine to \$75,000.

21 II. FINDINGS OF FACT

22 MLD licensed Curtis as a mortgage agent on or about December 4, 2009
23 (License No. 14112, NMLS ID No. 305127). MLD licensed B&F-C, LLC d/b/a 1-2-3
24 Mortgage as a mortgage broker on or about November 7, 2013 (License No. 4006,
25 NMLS ID No. 1098837).

26 A. Count I

27 On or about April 28, 2013, Curtis and his company, B&F, LLC (before it
28 became B&F-C, LLC and was assigned the 1-2-3 Mortgage d/b/a) originated a loan

1 for a property on W. Basic Rd. in Henderson, Nevada. B&F, LLC collected \$4,185 in
2 broker's fees at the completion of the transaction. B&F, LLC was not licensed as a
3 broker at the time of this transaction. Curtis was licensed as an agent and had been
4 for over twenty years. Curtis testified that at the time of this transaction, he was
5 employed as an agent by Noble Home Loans and that the transaction in question was
6 the first private money mortgage that he or Noble had ever worked on.

7 Curtis admitted during his testimony that this transaction was improper. Curtis
8 testified that he did not intend to break the law but that he took and trusted the advice
9 of another businessperson when he accepted the broker's fees in the name of his
10 unlicensed company.

11 **B. Counts II-IV**

12 1-2-3 Mortgage did not submit accurate monthly reports in May 2014, August
13 2014, September 2014, and October 2014. 1-2-3 Mortgage did not submit accurate
14 mortgage call reports to the Nationwide Mortgage Licensing System and Registry
15 ("NMLS Registry") in the second, third, and fourth quarters of 2014. 1-2-3 Mortgage
16 also submitted a late mortgage call report to the NMLS Registry in the fourth quarter
17 of 2014.

18 Curtis admitted during his testimony that 1-2-3 Mortgage failed to submit
19 accurate reports and submitted a late report. Curtis testified that 1-2-3 Mortgage did
20 not intend to break the law but that the requirements placed upon brokers by Nevada
21 law are numerous and cumbersome and he simply was not aware of all the
22 requirements. Curtis testified that 1-2-3 Mortgage did not realize any benefit,
23 monetarily or otherwise, from failing to submit accurate reports and that he hired an
24 employee to manage the business's reporting requirements in early 2015. Diana
25 Martinez, Compliance Audit Investigator for MLD, testified that accuracy in broker
26 reports is crucial to permitting the Division to conduct accurate audits in protection of
27 the public.

1 **C. Counts V-VII**

2 On or about July 1, 2014, Curtis and 1-2-3 Mortgage originated a loan for a
3 property located on Tara Ave. in Las Vegas, Nevada. A private investor, Eric Posin,
4 agreed to make an interest-only loan in the amount of \$150,000 to borrower Douglas
5 Stokely ("Stokely"), secured by a first deed of trust on the Tara Ave. investment
6 property. Posin testified that he agreed to make the loan upon reliance on information
7 contained in Stokely's loan application as provided to Posin by Curtis.

8 The loan application stated that Stokely was employed as a plumber for Vegas
9 Plumbing for 27 years with a monthly income of \$4,400, that Stokely possessed
10 investment accounts in the amount of \$174,000, and that the Tara Ave. property was
11 occupied by a lessee paying \$950 in rent monthly. Curtis represented to Posin that
12 Curtis interviewed Stokely personally to obtain the information contained in Stokely's
13 loan application. Curtis represented to Posin that Curtis personally called the phone
14 number for Vegas Plumbing given on the loan application and verified Stokely's
15 employment and that he verified Stokely's income via www.salary.com. Posin testified
16 that Curtis did not mention having met with or received any information concerning
17 Stokely from any third person. The loan application did not contain a credit report or
18 tax returns, and Curtis testified that with a private money loan, Curtis would only
19 obtain such documents at the specific request of the lender, and that Posin did not
20 make such a request.

21 Stokely did not make the first payment due on the loan and Posin immediately
22 commenced the process to declare a default on the loan. Posin moved to foreclose on
23 the home, but Stokely filed for bankruptcy the day of the foreclosure sale. Posin
24 participated in the bankruptcy case as a debtor and ultimately recovered the entirety
25 of his loan via the sale of the property. Posin testified that following the default, he
26 undertook his own investigation of Stokely. Posin testified that he called Vegas
27 Plumbing using the phone number listed on the loan application and the woman who
28 answered the phone stated that Stokely had not worked there for five years; Posin

1 asked for and received confirmation of this in writing. Posin also testified that the
2 documents Stokely filed in his bankruptcy action stated he was a self-employed
3 handyman earning \$500 a month and did not list any investment accounts in his
4 schedule of assets or proof of a lease on the Tara Ave. property.

5 Posin filed a complaint with MLD concerning Curtis and 1-2-3 Mortgage.

6 Curtis met with representatives of MLD in December 2015 to discuss the
7 allegations Posin made in the complaint. Curtis told MLD representatives that he had
8 obtained the information contained in the loan application from Najeeb Rahman, who
9 appeared in Curtis's office and identified himself as Stokely's financial advisor. Curtis
10 testified that he personally observed Stokely sign the loan application, and he had no
11 reason to disbelieve that the information provided in Stokely's loan application was
12 correct. At the hearing, Curtis testified that he verified Stokely's employment by phone
13 and saw proof of the investment accounts. Curtis was unable to provide proof of the
14 investment accounts as of the date of the hearing.

15 **III. CONCLUSIONS OF LAW**

16 **A. Count I**

17 NRS 645B.900 renders it "unlawful for any person to offer or provide any of the
18 services of a mortgage broker or mortgage agent or otherwise to engage in, carry on
19 or hold himself or herself out as engaging in or carrying on the business of a
20 mortgage broker or mortgage agent without first obtaining the applicable license
21 issued pursuant to this chapter[.]" Curtis violated NRS 645B.900 when he originated a
22 loan and accepted a broker's fee at the completion of the loan transaction in the name
23 of B&F, LLC, which was not a licensed broker.

24 Pursuant to NRS 645B.690, a person who commits a violation of NRS
25 645B.900 shall be subjected to a fine of not more than \$50,000 per violation. Curtis's
26 testimony that the violation was unintentional is relevant only insofar as it stands to
27 mitigate the amount imposed as an administrative fine for the violation. While this
28 transaction may well have been his and his employer's first experience with a private

1 money mortgage, as a licensed professional Curtis is responsible for conducting all
2 mortgage transactions in accordance with Nevada law, even on new transactions in
3 which he has no experience. In light of the absence of harm to any client, the one-
4 time nature of this particular violation, as well as Curtis's agreement to the revocation
5 of his agent and broker's licenses, I will impose a \$2,000 fine on Respondents for this
6 violation.

7 **B. Counts II-IV**

8 NRS 645B.080(2) requires a mortgage broker to submit monthly reports to the
9 Commissioner concerning the mortgage broker's activity for the previous month. NRS
10 645B.080(4) requires a mortgage broker to submit a report of condition to the
11 Commissioner and the NMLS Registry at any time required by the NMLS Registry. 1-
12 2-3 Mortgage violated NRS 645B.080(2) when it failed to include in its monthly report
13 activity concerning at least six loans originated in 2014. 1-2-3 Mortgage violated NRS
14 645.080(4) when it failed to submit reports of condition to the Registry for three
15 quarters in 2014 and submitted one report late.

16 Pursuant to NRS 645B.670(1)(b), a mortgage broker that commits a violation of
17 any provision of Chapter 645B may be fined not more than \$25,000 for each violation.
18 Reporting obligations are mandatory in furtherance of protection of the public. As a
19 licensed broker, 1-2-3 Mortgage is responsible for operating in accordance with all
20 legal requirements under Nevada law. However, MLD does not assert that 1-2-3
21 Mortgage benefited financially or otherwise from its violations of NRS 645B.080, nor
22 that any client or member of the public was harmed financially or otherwise as a result
23 of the violations. Curtis admitted to the violations and hired an employee whose duties
24 were to manage reporting obligations. Curtis also agreed to the revocation of the
25 broker's license at the conclusion of the hearing, ensuring that no further violations of
26 this sort will ever occur. Accordingly, I decline to impose an administrative fine for 1-2-
27 3 Mortgage's violations of NRS 645B.080.

1 **C. Counts V-VII**

2 NAC 645B.080(1) obligates a broker to provide in writing to any natural person
3 acting as an investor:

- 4 (a) A written application for the loan which is signed by
5 the prospective borrower and which contains the
6 borrower's address, a history of his or her
7 employment and income, details of monthly
8 payments he or she is obliged to pay and any other
9 information requested by the investor.
10 (b) Evidence of the history of employment of the
11 prospective borrower and income, such as a tax
12 return or an employer's statement of the borrower's
13 past yearly income.
14 (c) A report on the history of credit of the prospective
15 borrower issued by a credit reporting agency,
16 including an explanation by the borrower of any
17 material derogatory item in the report and evidence
18 that the report has been compared for accuracy to
19 the borrower's application for the loan.
20 (d) **An analysis by the mortgage broker of the ability
21 of the prospective borrower to pay his or her
22 monthly debts.**
23 (e) A preliminary report on the status of the title of the
24 property which is proposed as security for the loan.

25 (Bold emphasis added.) NRS 645B.0147 sets forth the fiduciary obligations of a
26 broker to a client:

- 27 1. In addition to any other duties set forth in this
28 chapter, any person licensed pursuant to this chapter
29 has a fiduciary obligation to a client.
30 [. . .]
31 3. As used in this section, "fiduciary obligation" means
32 a duty of good faith and fair dealing, including,
33 without limitation, the duty to:
34 (a) Act in the client's best interest;
35 (b) Conduct only those mortgage transactions which
36 are suitable for the client's needs;
37 (c) Disclose any financial, business, professional or
38 personal interest the person has in conducting a
39 mortgage transaction for the client;
40 (d) **Disclose any material fact that the person
41 knows or should know may affect the client's
42 rights or interests or the ability to obtain the
43 intended benefit from the mortgage transaction;**
44 (e) Provide an accounting to the client that lists all
45 money and property received from the client;

- 1 (f) Not accept or collect any fee for services rendered
2 unless the fee was disclosed to the client before the
3 service is provided; and
4 (g) **Exercise reasonable care in performing any
5 other duty relating to a mortgage transaction.**

6 (Bold emphases added.)

7 Posin agreed to make a loan to Stokely based on untrue information contained
8 in Stokely's loan application about his employment, income, assets, and ability to
9 repay the loan. While Curtis maintains that he did not knowingly or intentionally
10 include mis-information in the loan application, a reasonably prudent broker would
11 have taken steps to better ensure the accuracy of Stokely's finances, such as
12 obtaining employment verification in writing, obtaining proof of investment and bank
13 account totals in writing, and running a credit report. Curtis and 1-2-3 Mortgage
14 should have known that Stokely was self-employed, was not earning \$4,400 a month,
15 and did not possess \$174,000 in investment accounts. Curtis should not have
16 accepted unverified information about Stokely from Rahman, and at minimum, Curtis
17 should have informed Posin that he obtained information about the borrower from a
18 third party. Curtis has admitted his shortcomings in exercising reasonable care in this
19 transaction as evidenced by his offer to voluntarily step down from control of 1-2-3
20 Mortgage and surrender its broker and his agent licenses.

21 Pursuant to NRS 645B.670(1)(b), a mortgage broker that commits a violation of
22 any provision of Chapter 645B may be fined not more than \$25,000 for each violation.
23 Also pursuant to NRS 645B.670(1)(c), a mortgage agent that commits a violation of
24 any provision of Chapter 645B may be fined not more than \$25,000 for each violation.
25 I conclude that sufficient evidence has been adduced to show that Curtis and 1-2-3
26 Mortgage committed gross negligence as broker and agent in this transaction based
27 on their failure to exercise reasonable care in obtaining and presenting accurate
28 information concerning Stokely's ability to repay the loan. Given that MLD will be
revoking the broker and agent licenses, the general public will not be at risk for injury
by Curtis or 1-2-3 Mortgage. Moreover, Posin did not suffer any financial harm

1 because he was able to recover the entirety of the loan proceeds following the sale of
2 the property. Nonetheless, the dereliction of fiduciary duty by Curtis and 1-2-3
3 Mortgage is significant and warrants the imposition of a fine in the amount of \$10,000.

4 **IV. ORDER**

5 Pursuant to the parties' agreement, Respondents' broker and agent licenses
6 shall be revoked by MLD effective November 14, 2016.

7 For Curtis's violation of 645B.900, Curtis shall pay an administrative fine of
8 \$2,000.

9 For Respondents' gross negligence in failing to exercise reasonable care in
10 obtaining and presenting accurate information concerning Stokely's ability to repay
11 the loan, Respondents shall pay an administrative fine of \$10,000.

12 Respondents are also ordered to pay \$4,785 in costs to MLD pursuant to NRS
13 622.400.

14 Respondents may enter into a payment arrangement with MLD to govern the
15 timeline for their payment of the administrative fines and costs. In the event the
16 parties are unable to reach an agreement, Respondents shall pay all fines and costs
17 in full no later than April 28, 2017.

18 Dated this 2nd day of November, 2016.

19
20 /s/ Denise S. McKay
21 Denise S. McKay
22 Administrative Law Judge
23 State of Nevada
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