

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:

OCWEN FINANCIAL CORPORATION,

and

OCWEN LOAN SERVICING, LLC,
Mortgage Service License No. 4364,
NMLS ID. No. 1852,

and

OCWEN MORTGAGE SERVICING, INC.
Mortgage Service License No. 4365,
NMLS ID. No. 1089752,

Respondents.

Order No. 2017-005

Case No. 2017-005

ORDER TO CEASE AND DESIST
AND
NOTICE OF OPPORTUNITY FOR HEARING

Issued and Entered,
This 20th day of April, 2017,
By Cathy Sheehy,
Commissioner

I.
ORDER TO CEASE AND DESIST

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 645F of the Nevada Revised Statutes (specifically herein, NRS 645F.500 *et seq.* ("NRS 645F" or "the Statute") and Chapter 645F of the Nevada Administrative Code, as comprised in Sections 3 through 55, inclusive, of Adopted Regulation R120-15, referred to as

1 the Nevada Mortgage Servicer Regulations (“NAC 645F” or “the Regulation”) (collectively, “the Act”),
2 governing the licensing and conduct of mortgage servicers in the state of Nevada; and,

3 The Commissioner having been granted general supervisory power and control and
4 administrative enforcement authority over all mortgage servicers doing business or making application to
5 do business in the state of Nevada pursuant to the Act; and,

6 The Commissioner having been further vested with broad authority to conduct examinations and
7 investigations to determine whether any person has violated any provision of the Act; and,

8 The Division of Mortgage Lending (the “Division”) having received, as described in more detail
9 below, the description and results of a February 28, 2015 multi-state examination indicating that Ocwen
10 Financial Corporation (“OFC”), Ocwen Mortgage Servicing, Inc. (“OMS”), and Ocwen Loan Servicing,
11 LLC (“OLS”) (collectively referred to herein as “OCWEN”) have engaged in, or is engaging in, or is
12 about to engage in, acts or practices constituting violations of the Act and federal law and applicable
13 regulations; and,

14 The Division having reviewed the information and examination analysis received and in reliance
15 upon such examination findings, pursuant to Section 34, subsection (4)(d) of the Regulation, and
16 determined from that examination, that OCWEN has engaged in, is engaging in, or is about to engage
17 in, acts or practices which warrant the belief that the company has not demonstrated experience,
18 financial responsibility, character and general fitness so as to command the confidence of the
19 community and warrant a determination that OCWEN, and any control person of OCWEN, will operate
20 honestly, fairly and efficiently for the purposes of the Act and the Regulation; and,

21 The Division staff having reported the results of the aforementioned examination to the
22 Commissioner; and,

23 The Commissioner having reviewed the results of the examination, provides a description of the
24 PARTIES AND JURISDICTION relative to this matter and makes the following FINDINGS OF FACT
25 and CONCLUSIONS OF LAW:

26 **A. PARTIES AND JURISDICTION**

27 1. OFC is a Florida corporation with headquarters in West Palm Beach, Florida. OMS is a
28 U.S. Virgin Islands corporation with headquarters in St. Croix, U.S. Virgin Islands (License No. 4365,

1 NMLS ID No. 1089752). OLS is a Delaware limited liability company with headquarters located in
2 West Palm Beach, Florida (License No. 4364, NMLS ID. No. 1852). OLS, at all relevant times herein,
3 was a wholly-owned subsidiary of OMS, which was a wholly-owned subsidiary of OFC.

4 2. The Commissioner has jurisdiction over the licensing and regulation of persons and
5 entities engaged in the business of mortgage loan servicing in Nevada pursuant to the Act. See
6 specifically, Section 34, subsection (1) of the Regulation.

7 3. NRS 645F.510 requires that except as otherwise provided in the Statute, a person shall
8 not engage in the business of a mortgage servicer or hold himself or herself out as a mortgage servicer
9 in Nevada, without a license issued pursuant to the Statute.

10 4. A person requiring licensure as a mortgage servicer in Nevada had until January 31,
11 2016 to submit application for such license. If the person submitted a completed application by January
12 31, 2016, the Commissioner has permitted the person to continue to operate while the license
13 application is being processed, *subject to all other requirements of the Statute and the Regulation*. The
14 January 22, 2016 application of OLS for licensure as a Nevada mortgage servicer remains pending.
15 Upon information and belief, OMS may have withdrawn or abandoned its application for licensure as a
16 Nevada mortgage servicer.

17 5. The Multi-State Mortgage Committee ("MMC") is a committee of state mortgage
18 regulators who have agreed to address their enforcement concerns with OCWEN in a collective and
19 coordinated manner. On February 28, 2015, the states of Florida, Maryland, Massachusetts,
20 Mississippi, Montana, and Washington (collectively, the "Examining States") conducted a Multi-State
21 Examination of OCWEN in order to determine OCWEN'S compliance with applicable federal laws and
22 regulations, financial condition, and control and supervision of the licensed mortgage servicing
23 operations. The Multi-State Examination of OCWEN covered the period of January 1, 2013 to
24 February 28, 2015.

25 B. FINDINGS OF FACT

26 6. The Division re-alleges and incorporates paragraph 1 through 5 above as though fully set
27 forth herein.

1 7. NRS 645F.530(1) and Section 38, subsection (1) of the Regulation mandate a mortgage
2 servicer to comply with applicable federal or state law, regulation, or any order of the Commissioner.
3 Pursuant to Section 38, subsection (2) of the Regulation, a violation of any such law or regulation shall
4 constitute a violation of Section 38 and a basis upon which the Commissioner may impose discipline
5 pursuant to the Act.

6 8. Section 41, subsections (1)-(2) of the Regulation provide that the failure of an applicant,
7 licensee, or mortgage servicer to fail to conduct his or her business in accordance with any law, or to
8 violate any provision of the Act, order issued by the Commissioner, or applicable federal law or
9 regulation relating to mortgage servicing, is a violation of the Act.

10 9. The Commissioner is required by NRS 645F.530(2), and authorized pursuant to Section
11 22 and Section 34, subsections (2)(i)-(j) of the Regulation, to conduct examinations and investigations,
12 which may include the inspection of books, accounts, papers, records and files of mortgage servicers
13 transacting business in the state of Nevada (including those whose applications for licensure in the state
14 of Nevada are pending) to determine compliance with the provisions of the Act.

15 10. NRS 645F.530(3) permits the Commissioner, if upon examination or investigation of a
16 mortgage servicer or applicant for the issuance of a license as a mortgage servicer, determines that the
17 mortgage servicer or applicant has violated any applicable provision of the Act or Regulation, to take
18 such disciplinary action against the mortgage servicer as may be authorized by the Regulation.

19 11. For purposes of conducting any examination or investigation pursuant to the Act,
20 Section 34, subsection (4)(d) of the Regulation authorizes the Commissioner to *accept or rely on*
21 *reports of examination or investigations made by other state or federal government officials.*
22 (Emphasis added.)

23 12. The Commissioner requires as a condition of licensure and continued licensure under the
24 Act, that the mortgage servicer demonstrate experience, financial responsibility, character and general
25 fitness so as to command the confidence of the community and warrant a determination that such
26 mortgage servicer, and any control person of that mortgage servicer, operates honestly, fairly, and
27 efficiently for the purposes of the Act. (Section 22, subsection (2) of the Regulation.)
28

1 13. Section 37, subsections (1)-(2) of the Regulation impose upon a mortgage servicer a duty
2 of good faith and fair dealing in its communications, transactions and course of dealing with each
3 borrower (defined in Section 6 of the Regulation as a person that is a debtor on a mortgage loan), which
4 in addition to any duties imposed by other statutes or at common law, mandates the mortgage servicer
5 to: safeguard and account for any manner handled for the borrower or lender; follow reasonable and
6 lawful instructions from the borrower or lender; and act with reasonable skill, care and diligence.

7 14. Section 25 of the Regulation requires each applicant and licensee to demonstrate and
8 maintain financial responsibility.

9 15. Pursuant to Section 41, subsection (10) of the Regulation, it is a violation of the Act for
10 any applicant, licensee, or mortgage servicer to fail to properly apply payments to an *escrow account* or
11 fail to place in a *trust or escrow account* held by a federally insured depository financial institution, as
12 defined in NRS 645E.060, all money that is received by the mortgage servicer from the borrower or fail
13 to account for all money received or disbursed for a *trust or escrow account*. (Emphasis added.)

14 16. Section 41, subsections (9) and (11) of the Regulation, respectively, provide that the
15 failure of any applicant, licensee, or mortgage servicer to apply mortgage loan payments in accordance
16 with a servicing agreement or the terms of a note, or to make payments in a manner that causes a policy
17 of insurance to be cancelled or causes property taxes or similar payments to become delinquent,
18 constitute violations of the Act.

19 17. The failure of any applicant, licensee, or mortgage servicer to exercise reasonable
20 supervision over the activities of its employees or agents constitutes a violation of the Act. Section 41,
21 subsection (8) of the Regulation.

22 18. Section 49 of the Regulation vests in the Commissioner the authority to order a person
23 engaging in activities in violation of the Act to immediately cease and desist from engaging in the
24 activity.

25 19. During the aforementioned Multi-State Examination of OCWEN, the Examining States
26 identified several violations of state and federal law, including, but not limited to, consumer escrow
27 accounts they found could not be accurately or properly reconciled and willful and ongoing unlicensed
28

1 activity in certain states. Additionally, it was determined that OCWEN'S financial condition was
2 significantly deteriorating.

3 20. Although the Examining States were unable to gather comprehensive documentation of
4 the extent of unlicensed activity because OCWEN'S management failed to respond to requests for
5 information in a timely manner, the examination found that OCWEN subsidiaries were conducting
6 unlicensed activity in numerous jurisdictions. This unlicensed activity was cited in the report of exam.
7 The Examining States had numerous conversations with the Board of OFC in which the Examining
8 States communicated that these continuing violations were unacceptable and would not be tolerated.
9 While OFC partially addressed the unlicensed activity two years after it was initially cited, unlicensed
10 activity is believed to continue in certain jurisdictions.

11 21. The MMC examination found that OCWEN has been unable to accurately or properly
12 reconcile many of the consumer escrow accounts in its portfolio. Consumer escrow accounts are
13 accounts that contain consumer funds held for the payment of taxes and insurance. The MMC
14 examination further found that OCWEN failed to make timely disbursements to pay for taxes and
15 insurance from escrow accounts on numerous loans. The MMC examination also found that OCWEN
16 routinely sent consumers inaccurate, confusing, and/or misleading escrow statements.

17 22. Upon information and belief, as of year-end 2016, OCWEN serviced approximately
18 17,234 Nevada loans, with the estimated amount owed as \$2,772,596,350. While numerous complaints
19 for OCWEN'S mismanagement of borrower's accounts in Nevada (many of them having been filed
20 with the Division for the same period in which the Multi-State Examination was conducted), have been
21 referred to other state offices or federal agencies, or have been resolved by the Division, the charges
22 made against OCWEN reflect a pattern of questionable activities which negatively impact consumer
23 interests and affect the Division's mission to safeguard the public trust.

24 23. As reflected in the Nationwide Mortgage Licensing System and Registry ("NMLS"),
25 OCWEN has also been the subject of numerous regulatory actions in various jurisdictions and at least
26 one multi-state settlement agreement and consent order, in which Nevada was among 49 participating
27 States. That agreement, which resulted in a Consent Judgment filed on February 26, 2014 by the
28 United States District Court for the District of Columbia ("Judgment"), originated from the findings of

1 the multi-state examination of OFC and OLS covering the period of December 1, 2010 to October 24,
2 2011, which described the existence of lack of controls related to document retention; deficiencies in
3 loss mitigation and loan modification processes; inadequate staffing and lack of internal controls related
4 to customer service; deficiencies in control and oversight of third-party providers; deficiencies in
5 document maintenance processes; deficiencies in management control and supervision; and lack of
6 control related to general borrower account management (including *inaccurate escrow accounting and*
7 *statements*). The Judgment, in which the Consumer Financial Protection Bureau and the District of
8 Columbia were also identified as plaintiffs, ordered OFC and OLS, among other things, to pay the sum
9 of \$127.3 million in payments to foreclosed borrowers and for administrative costs.

10 24. The MMC examination found that in 2015, OCWEN failed to provide key financial
11 documents and accurate or proper reconcilements on its financial statements to regulators.

12 25. Based upon the findings of the MMC Examination and subsequent communications with
13 OFC, the state regulators and OCWEN entered into a Memorandum of Understanding (“MOU”) on
14 December 7, 2016.

15 26. The MOU required OCWEN to retain an independent auditing firm to perform a
16 comprehensive audit and reconciliation of all consumer accounts, with a report to be furnished by the
17 auditor to OCWEN and the MMC within five business days thereafter. The audit plan was to be
18 submitted to, and approved by, the MMC no later than January 13, 2017.

19 27. OCWEN’S response to the state regulators on January 13, 2017, was that the
20 reconciliation of escrow accounts, which is paramount in ensuring the appropriate management of
21 consumer funds, would cost \$1.5 billion and well beyond OCWEN’S financial capacity. OCWEN has
22 suggested instead that a sample of 457 escrow accounts be reconciled out of 2.5 million active first lien
23 escrow accounts that OCWEN has serviced since January 2013. This proposal could leave a vast
24 number of consumers with actual unreconciled or mismanaged escrow accounts.

25 28. OCWEN is currently facing numerous substantiated consumer complaints regarding
26 escrow accounts that have been mismanaged, resulting in significant harm to consumers, and requesting
27 reimbursement of monies wrongfully withheld or misapplied.

28

1 well as that prohibited by Sections 25 and Section 41, subsections (1), (2), (8), (9), 10), and (11), of the
2 Regulation.

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

4 **CEASE AND DESIST ORDER**

5 **IT IS HEREBY ORDERED** that:

6 OCWEN shall immediately cease acquiring new mortgage servicing rights, and acquiring or
7 originating new residential mortgages serviced by OCWEN, until OCWEN can show it is not a going
8 concern by providing a financial analysis that encompasses all of the liabilities OCWEN currently
9 maintains, as well as liabilities it has knowledge it will incur in the course of its business.

10 **IT IS FURTHER ORDERED** that:

11 OCWEN shall immediately cease from acquiring new mortgage servicing rights, and acquiring
12 or originating new residential mortgages serviced by OCWEN, until OCWEN can provide the state
13 regulators with an accurate reconciliation of its escrow accounts showing that consumer funds are
14 appropriately collected, properly calculated, and disbursed accurately and timely.

15 **IT IS FURTHER ORDERED** that an administrative hearing shall be scheduled in this matter
16 only if OCWEN timely requests an administrative hearing in accordance with the instructions set forth
17 in Section II of this Order entitled Notice of Opportunity for an Administrative Hearing. **If no**
18 **administrative hearing is requested within 30 calendar days of the effective date of this ORDER,**
19 **OCWEN shall be deemed to have waived and relinquished the right to an administrative hearing**
20 **in this matter and a FINAL ORDER shall be issued.**

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

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

25 **IT IS FURTHER ORDERED** that the Commissioner specifically retains jurisdiction over the
26 matters contained herein and has the authority to issue such further order(s) as she shall deem just,
27 necessary, and appropriate to enforce the Act and protect the public.

1 This Order shall not be construed as approving any act, practice or conduct not specifically set
2 forth herein which was, is, or may be in violation of relevant provisions of the Act or federal laws
3 and regulations.

4 IT IS SO ORDERED.

5 DIVISION OF MORTGAGE LENDING

6
7 By: 
8 CATHY SHEEHY, COMMISSIONER

9 II.

10 NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE HEARING

11 Section 49 of the Regulation provides as follows:

12 1. If a person engages in an activity in violation of the provisions of
13 chapter 645F of NRS or the Nevada Mortgage Servicer Regulations, the
14 Commissioner may issue an order to the person directing the person to
15 cease and desist from engaging in the activity.

16 2. The order to cease and desist must be in writing and served
17 personally or sent by certified mail to the last known address of the person
18 or by other means reasonably calculated to obtain service on the person
19 and must state that, in the opinion of the Commissioner, the person has
20 engaged in an activity:

21 (a) For which the person has not received a license as required by
22 chapter 645F of NRS and the Nevada Mortgage Servicer Regulations; or

23 (b) In a manner that violates the provisions of chapter 645F of NRS or
24 the Nevada Mortgage Servicer Regulations.

25 3. Not later than 30 calendar days after receiving an order pursuant to
26 this section, the person who receives the order may file a written notice
27 with the Commissioner to request a hearing. Upon receipt of the written
28 notice, the Commissioner may, for good cause shown, suspend the order

1 pending the hearing. The Commissioner will hold the hearing on a date
2 not later than 30 calendar days after the date on which the petition is filed
3 unless the Commissioner and the person agree to another date. The order
4 to cease and desist is rescinded if the Commissioner fails to:

5 (a) Hold a hearing:

6 (1) Not later than 60 calendar days after the date on which the written
7 notice is filed; or

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

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

11 4. A hearing held pursuant to this section must be conducted under the
12 provisions of chapter 233B of NRS and other applicable provisions of
13 law.

14 5. If a person fails to file a written notice to request a hearing within 30
15 calendar days after receiving the order, the Commissioner will issue a
16 final order.

17 6. A final order issued pursuant to subsection 5 or the decision of the
18 Commissioner after a hearing is a final decision for the purposes of
19 judicial review.

20 [Emphasis added.]

21 **If you wish to exercise your right to an opportunity for an administrative hearing, within**
22 **30 calendar days after receiving this Order, you must file a verified petition with the**
23 **Commissioner to request a hearing.**

24 The verified petition requesting a hearing must be delivered to:

25 Division of Mortgage Lending
26 Attn. Susan Slack
27 3300 West Sahara Avenue, Suite 285
28 Las Vegas, Nevada 89102

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

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