

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:

COMMLOAN, INC.

d/b/a or a/k/a COMMLOAN.COM, INC.,

d/b/a or a/k/a COMMLOAN.COM,

d/b/a or a/k/a COMMLOAN,

Mortgage Broker License No. UNL,

NMLS ID No. 1597276,

and

MITCHELL GINSBERG, President, Director,

and/or Chief Executive Officer,

Mortgage Broker / Agent License No. UNL,

Respondents.

Order No. 2018-002

Case No. 2018-002

ORDER TO CEASE AND DESIST,
ORDER IMPOSING AN ADMINISTRATIVE FINE AND INVESTIGATIVE COSTS,
AND
NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE HEARING

Issued and Entered,
This 9th day of March, 2018,
By Cathy Sheehy,
Commissioner

I.
ORDER TO CEASE AND DESIST
AND
ORDER IMPOSING AN ADMINISTRATIVE FINE AND INVESTIGATIVE COSTS

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, 645B.010 *et seq.* ("NRS 645B" or "the Statute"), and Chapter 645B of the Nevada Administrative Code, NAC 645B.001

1 *et seq.* ("NAC 645B" or "the Regulation") (collectively, "the Act"), governing the licensing and conduct
2 of mortgage brokers and mortgage agents doing business in the State of Nevada; and,

3 The Commissioner having been vested with general supervisory power and control over all
4 mortgage brokers and mortgage agents doing business in the State of Nevada pursuant to the Act; and,

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

7 The Division of Mortgage Lending (the "Division") having received information indicating that
8 COMMLOAN, INC., d/b/a or a/k/a COMMLOAN.COM, INC., d/b/a or a/k/a COMMLOAN.COM,
9 d/b/a or a/k/a COMMLOAN (collectively or alternatively referred to as "COMMLOAN") and
10 MITCHELL GINSBERG (collectively, "RESPONDENTS") were engaged in activity requiring
11 licensure as a mortgage broker under the Statute; and,
12

13 The Division having conducted an investigation of RESPONDENTS' business practices
14 pursuant to NRS 645B.060(2)(c), and determined, from that investigation, that RESPONDENTS were
15 engaged in activity requiring licensure as a mortgage broker under the Statute; and,
16

17 The Division Staff having reported the results of its investigation to the Commissioner; and,

18 The Commissioner having reviewed the results of the investigation and made the following
19 FINDINGS OF FACT and CONCLUSIONS OF LAW:

20 **Findings of Fact**

21 1. NRS 645B.900 prohibits any person from offering or providing any of the services of a
22 mortgage broker or mortgage agent or otherwise engaging in, carrying on or holding himself or herself
23 out as engaging in or carrying on the business of a mortgage broker or mortgage agent without first
24 obtaining the applicable license issued pursuant to the Statute, unless the person is properly exempt
25 from licensure.
26
27
28

1 2. NRS 645B.0127(1) defines "Mortgage Broker" to include "any person who, directly or
2 indirectly" does any of the following:

3 (a) Holds himself or herself out for hire to serve as an agent for any
4 person in an attempt to obtain a loan which will be secured by a lien on
5 real property;

6 (b) Holds himself or herself out for hire to serve as an agent for any
7 person who has money to lend, if the loan is or will be secured by a lien
8 on real property;

9 (c) Holds himself or herself out as being able to make loans secured by
10 liens on real property;

11 (d) Holds himself or herself out as being able to buy or sell notes secured
12 by liens on real property;

13 (e) Offers for sale in the State any security which is exempt from
14 registration under state or federal law and purports to make investments in
15 promissory notes secured by liens on real property.

16 3. RESPONDENTS are not currently and have at no time relevant to this matter been licensed by
17 the Commissioner as a mortgage broker in Nevada under the Statute.

18 4. The investigation specifically revealed the following:

19 a. COMMLOAN, INC. is registered by the Arizona Corporation Commission as a foreign
20 corporation domiciled in Delaware, with a domestic address of 16454 N. 91st Street, Suite 101,
21 Scottsdale, Arizona 85260 (File No. F21749134). Based upon information and belief, GINBSERG is
22 the president, director, and/or chief executive officer of COMMLOAN, INC. as well as all other
23 company names in which it may be doing business, or is known as doing business, as set forth in the
24 foregoing caption.

25 b. On or about January 15, 2015, COMMLOAN.COM, INC. (NMLS ID. No. 1248951) or
26 COMMLOAN.COM (MLD No. 4201) made application for a Nevada Mortgage Broker License, which
27
28

1 following a noted deficiency concerning the application as set forth in the NMLS, the Division deemed
2 to be withdrawn or abandoned on November 24, 2015.

3 c. On or about June 22, 2017, COMMLOAN, INC. was issued an Arizona Commercial
4 Mortgage Broker License (NMLS ID. No. 1597276), which has been renewed through year 2018.

5 d. On or about November 15, 2016, the Division became aware of facts indicating that
6 RESPONDENTS were engaged in activity requiring licensure under the Statute. In particular, directly
7 through their own website, COMMLOAN.COM, and as COMMLOAN is advertised in the website of
8 an alleged Las Vegas, self-proclaimed "leading real estate brokerage" and investment-service provider
9 which RESPONDENTS describe as a commercial broker with which RESPONDENTS have partnered
10 for RESPONDENTS' receipt of *client referrals*, RESPONDENTS solicit proposed borrowers to utilize
11 their "innovative commercial mortgage lending technology platform," identified as "CUPID," to
12 facilitate financing choices from among "hundreds of different lenders representing thousands of loan
13 products," providing the "tools necessary to easily and efficiently compare the loan terms."
14 RESPONDENTS advertise that in pursuit of the various commercial loan options available to
15 consumers "in the digital age," their CUPID platform functions to "guarantee" that each borrower is
16 "always matched with the best possible loan" in a "one-stop shopping" capital marketplace. Expressly
17 proclaiming themselves as engaged in "state of the art commercial lending," RESPONDENTS urge
18 borrowers to "LET CUPID MATCH YOU TO THE BEST COMMERCIAL LOAN ON THE
19 MARKET TODAY" by directing access to their website link for making quick-loan application and
20 telephone discussion with a loan officer or credit manager, whereby the borrower may obtain any
21 additional information required to connect the borrower "with the right loan product." The website
22 instructions provided on RESPONDENTS' loan-process page further represent that within minutes of
23 making loan application, the proposed borrower will receive a prequalification certificate outlining the
24 terms of his/her loan options with a list of required documentation.

25 e. In their website, RESPONDENTS identify a full range of offered loan types, including
26 conventional, Freddie Mac, Fannie Mae, and HUD loans. RESPONDENTS additionally describe the
27 types of lenders as including banks, commercial mortgage companies, and private money lenders, and
28 the types of properties for which financing may be obtained (for purchase, refinance, construction or

1 rehab) as including include office buildings, industrial buildings, "Land," "Mixed Use," and
2 "Multifamily."

3 f. In addition to touting three "recently funded loans" for Nevada properties, two for Las Vegas
4 multi-family properties, and one for a Mesquite hospitality-related property, RESPONDENTS' website
5 additionally contains a commercial-mortgage testimonial by an alleged Las Vegas borrower, who
6 professes that the realization of his dream in the purchase of his own recording studio was facilitated by
7 COMMLOAN in making or arranging the necessary loan, which according to RESPONDENTS'
8 "Relationship Manager," resulted following referral of the client by RESPONDENTS' alleged business
9 partner as described above, in approximately October, 2016. The Relationship Manager further
10 explained to a Division investigator that the company essentially functions as a "commercial real estate
11 financing search engine" which "does not provide leads to companies" and neither negotiates the terms
12 of loans nor provides direct financing, but when "financing opportunities are presented," uses its
13 database, technology platform to match-up or "simply connect borrowers to lenders" in a manner which
14 "best suits the needs of the consumer," in obtaining financing for the borrower's project.
15 RESPONDENTS' Relationship Manager stressed that the company with which they partner for
16 RESPONDENTS' procurement of client referrals (as described above), is the only company with which
17 they have worked "so far in Nevada" and to which RESPONDENTS pay compensation for
18 RESPONDENTS' receipt of such referrals.

19 g. On more than one occasion, RESPONDENTS represented that they were "working on"
20 obtaining licensure in Nevada, but to date the Nevada broker license application submitted by
21 COMMLOAN.COM, INC. or COMMLOAN.COM remains in a withdrawn or abandoned status.

22 h. In RESPONDENTS' operation of their own website, and as advertised in the website of their
23 alleged business partner as described above, RESPONDENTS hold themselves out for hire to serve as
24 an agent for any person in an attempt to obtain a loan, and hold themselves out for hire to serve as an
25 agent for any person who has money to lend, within the meaning of NRS 645B.0127(1)(a)-(b). Even if
26 RESPONDENTS do not arguably hold themselves out as *negotiators* of loans or as direct *funders* of
27 loans in mortgage transactions between borrowers and lenders, RESPONDENTS engage or operate as a
28 self-admitted lead generator for mortgage lenders by directly targeting the public, as well as the

1 prospective borrowers for whom RESPONDENTS pay their business partner to refer to
2 RESPONDENTS, for the solicitation of business from consumers via CUPID, RESPONDENTS'
3 "turnkey web-based mortgage platform." By matching profiles gained from the proprietary information
4 they collect from the consumer, to the loan products of the participating mortgage lenders which
5 RESPONDENTS' designed computer program or automated transmission service may determine to
6 best fit the consumer's alleged financial abilities or needs, RESPONDENTS serve as the conduit by
7 which a resulting mortgage loan may be originated and achieved. In conformance with
8 RESPONDENTS' platform and as particularly facilitated by their website, a prospective borrower is
9 provided access to an online mortgage-loan application.

10 i. RESPONDENTS engaged in unlicensed activity in relation to at least three Nevada- situated
11 properties.

12 5. NAC 645B.515 vests in the Commissioner the authority to order a person engaging in activity in
13 violation of the Act to immediately cease and desist from engaging in the activity.

14 6. NRS 645B.690 requires the Commissioner to impose an administrative fine of not more than
15 \$50,000 on a person that offers or provides any of the services of a mortgage broker or mortgage agent
16 or otherwise engages in, carries on or holds himself or herself out as engage in or carrying on the
17 business of a mortgage broker or mortgage agent and, at the time the person was required to have a
18 license pursuant to this chapter and the person did not have such a license.

19 7. Any finding of fact that may be deemed a conclusion of law shall be so construed.

20 Conclusions of Law

21 8. Unless otherwise exempt, it is a violation of NRS 645B.900 for any person to offer or provide
22 any of the services of a mortgage broker or otherwise to engage in, carry on or hold himself or herself
23 out as engaging in or carrying on the business of a mortgage broker without first obtaining the
24 applicable license issued pursuant to the Statute.

25 9. By engaging in activities or conduct which require licensure under the Statute without holding
26 the appropriate license, and not being exempt from the licensure requirements, RESPONDENTS are in
27 violation of NRS 645B.900.

10. The Commissioner is authorized pursuant to NAC 645B.515 to order a person to cease and desist from engaging in any activity that violates any provision of the Statute.

11. The Commissioner is required pursuant to NRS 645B.690 to impose an administrative fine of not more than \$50,000 on a person who offers or provides any of the services of a mortgage broker or otherwise engages in, carries on or holds himself or herself out as engaging in or carrying on the business of a mortgage broker and, at the time the person was required to have a license pursuant to the Statute and the person did not have such a license.

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

Order

The Commissioner having formed the opinion based upon the foregoing that RESPONDENTS have been or are engaged in unlicensed activity in violation of the Statute, and concluded and determined that RESPONDENTS should be ordered to: 1) cease and desist from engaging in any activity requiring licensure under NRS 645B; 2) pay an administrative fine; and 3) pay the Division's investigative costs.

NOW, THEREFORE, IT IS ORDERED that COMMLOAN, INC., d/b/a or a/k/a COMMLOAN.COM, INC., d/b/a or a/k/a COMMLOAN.COM, d/b/a or a/k/a COMMLOAN, and MITCHELL GINSBERG shall immediately CEASE AND DESIST from advertising, engaging in, or otherwise carrying on or holding themselves out as engaging in or carrying on any activities that require licensure as a mortgage broker under the Statute.

IT IS FURTHER ORDERED that an ADMINISTRATIVE FINE in the amount of \$15,000.00 shall be and hereby is imposed, jointly and severally, on COMMLOAN, INC., d/b/a or a/k/a COMMLOAN.COM, INC., d/b/a or a/k/a COMMLOAN.COM, d/b/a or a/k/a COMMLOAN, and MITCHELL GINSBERG in accordance with NRS 645B.690. The ADMINISTRATIVE FINE shall be due and payable on the 30th day following the effective date of this Order and shall be tendered to the Division in accordance with the attached wire transfer instructions.

IT IS FURTHER ORDERED that the Division's INVESTIGATIVE COSTS in the amount of \$3,285.00 shall be and hereby is assessed, jointly and severally, on COMMLOAN, INC., d/b/a or a/k/a COMMLOAN.COM, INC., d/b/a or a/k/a COMMLOAN.COM, d/b/a or a/k/a COMMLOAN, and

1 MITCHELL GINSBERG in accordance with NRS 622.400. The INVESTIGATIVE COSTS shall be
2 due and payable on the 30th day following the effective date of this Order and shall be tendered to the
3 Division in accordance with the attached wire transfer instructions.

4 IT IS FURTHER ORDERED that an administrative hearing shall be scheduled in this matter
5 only if RESPONDENTS timely request an administrative hearing in accordance with the instructions
6 set forth in Section II of this ORDER entitled Notice of Opportunity for an Administrative Hearing. **If**
7 **no administrative hearing is requested within 30 calendar days of the effective date of this**
8 **ORDER, RESPONDENTS shall be deemed to have waived and relinquished the right to an**
9 **administrative hearing in this matter and a FINAL ORDER shall be issued in this matter.**

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

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

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

17 IT IS SO ORDERED.
18

19 DIVISION OF MORTGAGE LENDING

20
21 By: 
22 CATHY SHEEHY, COMMISSIONER

23 II.

24 NOTICE OF OPPORTUNITY FOR AN ADMINISTRATIVE HEARING

25 NAC 645B.515 provides as follows:

26 1. If a person engages in an activity in violation of the provisions of this
27 chapter or chapter 645B of NRS, the Commissioner may issue an order to the
28 person directing the person to cease and desist from engaging in the activity.

1 2. The order to cease and desist must be in writing and must state that, in the
2 opinion of the Commissioner, the person has engaged in an activity:

3 (a) For which the person has not received a license or certificate of
4 exemption as required by chapter 645B of NRS; or

5 (b) In a manner that violates the provisions of this chapter or chapter
6 645B of NRS.

7 3. A person who receives an order to cease and desist pursuant to this section
8 shall not engage in any activity governed by chapter 645B of NRS after receiving
9 the order unless the order is suspended or rescinded.

10 4. Not later than **30 calendar days** after receiving an order pursuant to this
11 section, the person who receives the order may file a verified petition with the
12 Commissioner to request a hearing. Upon receipt of the verified petition, the
13 Commissioner may, for good cause shown, suspend the order pending the hearing.
14 The Commissioner will hold the hearing on a date not later than 30 calendar days
15 after the date the petition is filed unless the Commissioner and the person agree to
16 another date. The order to cease and desist is rescinded if the Commissioner fails
17 to:

18 (a) Hold a hearing:

19 (1) Not later than 30 calendar days after the date the petition is filed; or

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

21 (b) Render a written decision within 45 days after the date the hearing is
22 concluded.

23 5. The decision of the Commissioner after a hearing is a final decision of the
24 Division for the purposes of judicial review.

25 [Emphasis added.]

26 NRS 645B.750 provides as follows:

27 1. If the Commissioner enters an order taking any disciplinary action against a
28 person or denying a person's application for a license, the Commissioner shall

1 cause a written notice of the order to be served personally or sent by certified mail
2 or telegram to the person.

3 2. Unless a hearing has already been conducted concerning the matter, the
4 person, upon application, is entitled to a hearing. If the person does not make such
5 an application **within 20 days** after the date of the initial order, the Commissioner
6 shall enter a final order concerning the matter.

7 3. A person may appeal a final order of the Commissioner in accordance with
8 the provisions of chapter 233B of NRS that apply to a contested case.

9 [Emphasis added.]

10 **If you wish to exercise your right to an opportunity for an administrative hearing, within**
11 **30 calendar days after receiving this Order, you must file a verified petition with the**
12 **Commissioner to request a hearing.**

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

14 Division of Mortgage Lending
15 Attn. Susan Slack
16 3300 West Sahara Avenue, Suite 285
Las Vegas, Nevada 89102

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

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:

COMMLOAN, INC.
d/b/a or a/k/a COMMLOAN.COM, INC.,
d/b/a or a/k/a COMMLOAN.COM,
d/b/a or a/k/a COMMLOAN,
Mortgage Broker License No. UNL,
NMLS ID No. 1597276,

and

MITCHELL GINSBERG, President, Director,
and/or Chief Executive Officer,
Mortgage Broker / Agent License No. UNL,

Respondents.

Order No. 2018-002

Case No. 2018-002

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: _____

1 Office Phone: _____ E-mail Address: _____
2
3
4
5

6 **COUNSEL CONTACT INFORMATION**

7 Name of Counsel: _____

8 Address: _____
9 _____

10 Office Phone: _____ E-mail Address: _____
11
12

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

15 _____ I am represented by counsel and direct all documents and correspondence regarding this matter
16 to be sent to my counsel of record at the address provided above. (Attorneys must attach and file
17 an appearance with this response.)
18
19

20 Respectfully Submitted,
21
22
23
24
25
26
27
28
