

1 having considered all the evidence introduced and admitted by both parties, the
2 undersigned Administrative Law Judge finds and concludes as follows:

3 **I. PROCEDURAL HISTORY**

4 This matter commenced on April 19, 2018, when the MLD issued an "Order to
5 Cease and Desist, Order Imposing an Administrative Fine and Investigative Costs, and
6 Notice of Opportunity for Administrative Hearing" (the "Complaint") for violations of NRS
7 645B and NAC 645B activities against Respondents.
8

9 On June 11, 2018, Respondents notified MLD that they disagreed with the
10 Complaint and requested a hearing. The hearing took place on March 1, 2019. Through
11 stipulation by both parties, MLD's documentary evidence SMLLC0001 through
12 SMLLC0539, marked as Exhibit 1, was admitted into evidence.
13

14 **II. FINDINGS OF FACT**

15 There is substantial evidence in the record, which contains the legal evidence
16 presented at the hearing, to establish each of the facts hereinafter set forth in these
17 Findings of Fact:

18 **A. DIANA MARTINEZ**

19 Diana Martinez testified to the following:

- 20 1. That she has been employed as a Compliance Audit Investigator for MLD
21 since May of 2007.
22
23 2. That the Nevada Labor Commission referred Respondents' case to MLD. ¹
24
25 3. That she observed www.sierramountainmortgage.com, a website posted
26 by the Respondents (the "Website") advertising that the Respondents were a mortgage
27 broker named Sierra Mountain Mortgage ("SMM") in Reno, Nevada.
28
29 4. That SMM was not licensed with the Nevada Department of Mortgage

¹ State's Exhibit 1, pages SMLLC0030, 0031, 0083.

1 Lending.²

2 5. That the Website advertised two mortgage lending locations: 50 West
3 Liberty Street, Suite 1040, Reno Nevada 89501; and 9090 Double Diamond Parkway,
4 Suite A, Reno, Nevada 89521. The Website also provided a direct phone number, fax
5 number, and a toll-free number for each mortgage lending location.³

6
7 6. That Lohrey's photograph and biography appeared on the Website
8 representing that he was a managing member of SMM at the West Liberty address. The
9 Website stated in part, "In 2015, Mr. Lohrey founded Sierra Mountain Mortgage,
10 servicing the Reno and Lake Tahoe region with residential Mortgage Programs."⁴

11 7. That the Nevada Secretary of State's website indicated that Sierra
12 Mountain, LLC was formed on November 19, 2015 and listed David and Harmony Lohrey
13 as the managing members and David Lohrey as the Registered Agent located at 6058
14 Plumas Street, #B, Reno, Nevada 89519.⁵

15
16 8. That the Nevada Secretary of State's website indicated that Sierra
17 Mountain Capital, LLC was formed on May 27, 2016 and listed David and Harmony
18 Lohrey as the managing members and David Lohrey as the Registered Agent located at
19 50 West Liberty Street, Suite 1040, Reno, Nevada 89501.⁶

20 9. That the entity SMM is a "Reserved Name" through the Nevada Secretary
21 of State's Office with David Lohrey as the Reservation Holder located at 50 West Liberty
22 Street, Reno, Nevada 89501.

23
24 10. That on August 1, 2016, Rodriguez sent a letter to Lohrey stating in part,
25 "The State of Nevada, Division of Mortgage Lending (the "Division") is in receipt of

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27 ² State's Exhibit 1, page SMLLC0033.

³ State's Exhibit 1, page SMLLC0035.

⁴ State's Exhibit 1, page SMLLC0037.

⁵ State's Exhibit 1, page SMLLC0016.

⁶ State's Exhibit 1, page SMLLC0014.

1 information indicating that Sierra Mountain Mortgage LLC (the "Company") may be
2 engaged in activity requiring licensure as a mortgage broker under Chapter 645B of the
3 Nevada Revised Statutes, NRS 645B.010 *et seq.* (the "Act"). Division records do not
4 reflect that the Company is properly licensed under the act."⁷

5
6 11. That the August 1, 2016 letter was generated to inquire about the two
7 Reno business locations as stated on the SMM website and as to why the website
8 showed a Nationwide Mortgage Licensing System & Registry ("NMLS") number for a
9 business named Renew Lending.

10 12. That the businesses named Sierra Mountain Capital LLC, Sierra Mountain
11 Mortgage, or Sierra Mountain LLC., were never a DBA of Renewed Lending.

12 13. That on August 15, 2016 Lohrey responded to MLD's letter. Lohrey stated
13 that SMM is a DBA of Renew Lending but has not taken any loan applications in Nevada.
14 The office at 50 West Liberty Street was leased in April of 2016 and opened for business
15 in June of 2016. Lohrey further stated that Scott Madens, a loan agent with Renew
16 Lending helped him get the office up and running. Lohrey attached a SMM marketing
17 flyer for Scott Madens. Lohrey further stated that he was getting ready to submit for SMM
18 licensing.⁸

19
20 14. That the flyer "Residential Mortgage Checklist" attached to Lohrey's
21 August 15, 2016 letter indicated that Scott Madens, Operations Manager of SMM, was
22 headquartered at 50 West Liberty Street, Suite 1040, Reno, Nevada 89501. That the
23 information provided specified the necessary requirements SMM needed to process a
24 residential loan, including Scott Madens' phone number, email address, and website
25 address for "Sierra Mountain Mortgage," but failed to indicate that SMM was a subsidiary
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28 ⁷ State's Exhibit 1, pages SMLLC0080-0081.

⁸ State's Exhibit 1, pages SMLLC0277-0280.

1 of Renew Lending.⁹

2 15. That in February of 2017, after correspondence between MLD and Lohrey
3 resulted in noncompliance, Rodriguez decided to make a site visit to SMM. Rodriguez
4 met with Lohrey at the 50 West Liberty Street address and observed "Sierra Mountain
5 Mortgage, Suite 1040" on the lobby's directory, and a sign on the front door to Suite 1040
6 stating, "Sierra Mountain, LLC." Inside 50 West Liberty Street, Rodriguez observed
7 several employees at the office. The office was outfitted with furniture, computers and
8 office equipment.¹⁰

9
10 16. That around the same time Rodriguez visited SMM's Double Diamond
11 location and observed signage in the window displaying, "Sierra Mountain Mortgage,
12 Please call our downtown office if this office is closed." ¹¹

13
14 17. That Rodriguez discussed the ongoing violations concerning the two Reno
15 locations with Lohrey. Lohrey stated that no loans were processed, and he would not
16 process any loans until proper licensing was obtained. Rodriguez again told Lohrey that
17 the website and signage must be removed immediately from both locations.

18 18. That after Lohrey continued to fail to comply with demands to obtain
19 licensing, Rodriguez issued a letter on May 23, 2017 stating:

20 This correspondence is concerning the investigation that the
21 Division of Mortgage Lending ("Division") is currently
22 conducting of Sierra Mountain Mortgage LLC, Sierra Mountain
23 Capital LLC and Sierra Mountain LLC. The Division has
24 reviewed your response dated May 19, 2017 and has
25 determined that the response is inadequate and unacceptable.
26 Currently your information will be submitted to management for
27 further review and possible enforcement action.¹²

28 19. That Lohrey responded that it was Renew Lending's obligation to file a

⁹ State's Exhibit 1, page SMLLC0280.

¹⁰ State's Exhibit 1, pages SMLLC0055-0059.

¹¹ State's Exhibit 1, page SMLLC0055.

¹² State's Exhibit 1, page SMLLC0068.

1 DBA and other necessary paperwork in Nevada to make SMM a legal entity. Lohrey
2 continually expressed that he thought the licensing had been taken care of since he
3 signed a marketing agreement with Renew Lending. However, Lohrey has never
4 produced an executed marketing agreement between Renew Lending and
5 Respondents.

6
7 **B. DAVID LOHREY**

8 David Lohrey testified to the following:

9 20. That a relationship was created in California with Renew Lending around
10 February of 2016, with the idea of Lohrey expanding to the Reno area in April of 2016.

11 21. That Lohrey entered into an agreement with Renew Lending around March
12 2016 that lead to the lease of two locations in the Reno area. Both locations became
13 operational by July of 2016.

14 22. That Renew Lending was responsible for filing all the necessary paperwork
15 for Lohrey to operate as a branch office of Renew Lending in Reno.

16 23. That in September of 2016 Lohrey discovered that Renew Lending did not
17 follow through with any of the licensing requirements for SMM.

18 24. That Lohrey should not be held responsible for Renew Lending's failure
19 to obtain licensing for SMM.

20 25. That the only license obtained by Lohrey was a Washoe County Business
21 License.

22 26. That all websites and business cards for SMM reflected the 50 West
23 Liberty Street address.

24 27. That SMM was for residential lending and Sierra Mountain Capital LLC
25 was for commercial lending.

26 28. That after Lohrey signed the agreement, Renew Lending was very
27
28

1 uncooperative, and Respondents had extreme difficulties processing loans through
2 Renew Lending.¹³

3 29. That Lohrey received a letter from MLD in August of 2016 stating that
4 Renew Lending's license was on hold and Sierra Mountain Mortgage was no longer able
5 to use Renew Lending.

6
7 30. That on September 12, 2016, Lohrey sent an email to McIntyre stating:

8 The main component in our growth has been the issue with
9 Renew Lending while everyone remembers that we would
10 operate as branch offices of Renew they have been very slow
11 and uncooperative in the terms of getting things up to speed in
12 a fashion that would have helped accelerate our growth. In fact,
13 I've just recently found that they have some licensing issues of
14 their own in Nevada and those such as creating an obstacle for
15 us moving forward. As our plan we have now submitted our
16 application to the mortgage lending Department in Nevada and
17 should have a response and hopefully approval within the next
18 6 to 8 weeks. I have engaged a very well-known Real Estate
19 Attorney Law Firm here in Reno [sic] Holland and Hart which has
20 been processing and putting together our application for the
21 Nevada state application.¹⁴

22 31. That for eight months in 2016, Lohrey was under the impression that
23 Sierra Mountain Mortgage was legally licensed and capable of processing loans.

24 32. That Lohrey never received, posted or displayed any type of MLD licensing
25 for either Reno office location.

26 33. That all contractual documents with Renew Lending were signed
27 electronically and were kept in a fire proof safe at the Liberty address. In 2018 Lohrey
28 moved out of the Liberty office and deliberately left the safe there. As a result, Lohrey
claims he has no way to produce evidence or executed documents.

C. AMANDA MCINTYRE

Amanda McIntyre testified to the following:

¹³ State's Exhibit 1, page SMLLC0325 paragraph 4.

¹⁴ State's Exhibit 1, page SMLLC0410 line 24.

1 through Renew Lending. As the qualified employee it was his responsibility to see that
2 SMM was compliant with all laws and regulations. When hired, he was not aware of any
3 licensing problems with Renew Lending.

4 43. That he procured four loan applications while working at SMM and had
5 difficulties processing them through Renew Lending. He stated at the hearing, "Once
6 we found out Renew Lending was not licensed in Nevada we had to stop trying to
7 process loans."
8

9 44. That Lucas was not licensed through NMLD, MLD or sponsored by SMM
10 or Renew Lending.

11 45. That it appeared to Lucas that SMM was a fully functional mortgage
12 brokerage company. Once he found out that SMM could not process loans through
13 Renew Lending he tried reaching out to other lenders.
14

15 46. Any finding of fact more appropriately considered a conclusion of law, and
16 vice versa, shall be so deemed.

17 III. CONCLUSIONS OF LAW

18 1. Lohrey contends that in February of 2016 he signed an agreement with
19 Renew Lending to act as SMM, a branch office of Renew Lending in Reno.¹⁶ He further
20 contends that according to the agreement, Renew Lending had full and total control over
21 the obligation to acquire SMM licensing with NMLA, MLD and the State of Nevada.
22 Lohrey set up two SMM Reno locations assuming that all licensing was obtained.
23

24 2. Lohrey argues that Renew Lending acted in bad faith by not acquiring the
25 proper licensing, and that Respondents had no intentions of operating illegally.
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¹⁶ State's Exhibit 1, pages SMLLC0394-0409.

1 3. MLD contends that by opening and operating offices in Reno, Lohrey
2 violated the provisions of Chapter 645B of the Nevada Revised Statutes. Specifically,
3 NRS 645B.900 states:

4 NRS 645B.900 Unlawful to conduct business of mortgage
5 broker or mortgage agent without being licensed or exempt
6 from licensing. It is unlawful for any person to offer or provide
7 any of the services of a mortgage broker or mortgage agent
8 or otherwise to engage in, carry on or hold himself or herself
9 out as engaging in or carrying on the business of a mortgage
10 broker or mortgage agent without first obtaining the applicable
11 license issued pursuant to this chapter, unless the person:

1. Is exempt from the provisions of this chapter; and
2. Complies with the requirements for that exemption.

12 4. NRS 645B.0127 "Mortgage broker" defined.

13 1. "Mortgage broker" means a person who directly or indirectly:

- 14 (a) Holds himself or herself out for hire to serve as an agent for
15 any person in an attempt to obtain a loan which will be
16 secured by a lien on real property;
- 17 (b) Holds himself or herself out for hire to serve as an agent
18 for any person who has money to lend, if the loan is or will
19 be secured by a lien on real property;
- 20 (c) Holds himself or herself out as being to make loans
21 secured by liens on real property;
- 22 (d) Holds himself or herself out as being able to buy or sell
23 notes secured by liens on real property; or
- 24 (e) Offers for sale in this State any security which is exempt
25 from registration under state or federal law and purports to
26 make investments in promissory notes secured by liens on
27 real property.

28 5. NRS 645B.690 Duty of Commissioner to take disciplinary
 action for certain violations.

1. If a person offers or provides any of the services of a
mortgage broker or mortgage agent or otherwise engages in,
carries on or holds himself or herself out as engaging in or
carrying on the business of a mortgage broker or mortgage
agent and, at the time:

- (a) The person was required to have a license pursuant to this
chapter and the person did not have such a license;
- (b) The person was required to be registered with the Registry
and the person was not so registered; or

1 (c) The person's license was suspended or revoked pursuant to
2 this chapter,
3 the Commissioner shall impose upon the person an administrative
4 fine of not more than \$50,000 for each violation and, if the
5 person has a license, the Commissioner may suspend or
6 revoke it.

7 2. If a mortgage broker violates any provision of subsection 1
8 of NRS 645B.080 and the mortgage broker fails, without
9 reasonable cause, to remedy the violation within 20 business
10 days after being ordered by the Commissioner to do so or
11 within such later time as prescribed by the Commissioner, or
12 if the Commissioner orders a mortgage broker to provide
13 information, make a report or permit an examination of his or
14 her books or affairs pursuant to this chapter and the mortgage
15 broker fails, without reasonable cause, to comply with the
16 order within 20 business days or within such later time as
17 prescribed by the Commissioner, the Commissioner shall:

18 (a) Impose upon the mortgage broker an administrative fine of
19 not more than \$25,000 for each violation;

20 (b) Suspend or revoke the license of the mortgage broker; and

21 (c) Conduct a hearing to determine whether the mortgage broker
22 is conducting business in an unsafe and injurious manner that
23 may result in danger to the public and whether it is necessary
24 for the Commissioner to take possession of the property of the
25 mortgage broker pursuant to NRS 645B.630.

26 3. If a mortgage broker:

27 (a) Makes or offers for sale in this State any investments in
28 promissory notes secured by liens on real property; and

(b) Receives the lowest possible rating on two consecutive
periodic standard examinations pursuant to NRS 645B.060,

the Commissioner shall suspend or revoke the license of the
mortgage broker.

6. The law in Nevada explicitly states that no person either directly or
indirectly can hold themselves out for hire to serve as an agent in attempts to obtain a
loan on real property. That means under **no circumstances** can anyone act as a
mortgage broker without first being properly licensed.

7. Around March of 2016, Lohrey allegedly signed an agreement with Renew
Lending to operate as a DBA in Nevada. Additional steps were needed in order to
properly operate as a licensed mortgage broker in Nevada. Knowing he was not
licensed, Lohrey proceeded to open two separate locations in Reno. Both Reno

1 locations displayed signs stating "Sierra Mountain Mortgage" both on the office door and
2 the building's directory.¹⁷

3 8. Lohrey immediately proceeded to outfit both locations with employees,
4 office furniture, computers, stationary, and business cards. Both locations were easily
5 accessible to the public.

6
7 9. While working at the West Liberty address, Lucas attempted to process
8 four separate loans. His affidavit dated December 17, 2018 specifically stated, "In the
9 meantime, I lost 4 loans I was working on to submit to them."¹⁸ Additionally, "When I
10 started I was told that the company was sending their loans to Renew Lending since
11 Sierra Mountain Mortgage was not set up yet as a lender in the State of Nevada."¹⁹

12 10. Two of Lucas's loans came by way of walk-ins at the West Liberty address.
13 Lucas was under the assumption that Sierra Mountain Mortgage was a legally licensed
14 DBA of Renew Lending and Lohrey allowed him to operate that way.

15
16 11. During the investigation MLD uncovered a detailed website
17 www.sierramountainmortgage.com that was active on the internet. The website
18 specifically stated, "'WELCOME to SIERRA MOUNTAIN MORTGAGE!' The Sierra
19 Mountain Mortgage Team is your premier mortgage team located in Reno, Nevada. We
20 pride ourselves on offering some of the lowest rates nationwide and make the loan
21 process simple, straightforward and fast for borrowers seeking a mortgage in the Reno
22 area."²⁰

23
24 12. Lohrey testified that he worked very hard to develop the content of the
25 website.

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27 ¹⁷ State's Exhibit 1, pages SMLLC0055-0059

28 ¹⁸ State's Exhibit 1, page SMLLC0435 paragraph 3 line 10.

¹⁹ State's Exhibit 1, page SMLLC0435 paragraph 3 line 2.

²⁰ State's Exhibit 1, page SMLLC0033.

1 13. The website had contact information of, "Sierra Mountain Mortgage," 50
2 West Liberty Street, Reno, Nevada 89501; Phone: (775) 210-0477; Email:
3 Info@sierramountainmortgage.com. The website also displayed Lohrey's biography as
4 managing member of "Sierra Mountain Mortgage."²¹

5 14. Martinez sent numerous letters to Lohrey advising him that all
6 advertisements and websites needed to be removed. After Lohrey notified her that all
7 content was removed, she discovered Lohrey had another website address of
8 www.sierramountaincapital.biz. The website specifically referenced Sierra Mountain
9 Capital, LLC as a source for commercial loans at the 50 West Liberty address.²²

10 15. Lohrey argued that SMM was fully licensed because it was Renew
11 Lending's responsibility to make SMM compliant. To the contrary, Lohrey's email dated
12 August 2, 2018, specifically stated, "In the mortgage business you are not allowed to do
13 any residential loans or being that business unless you are fully licensed as residential
14 agents and to attend a n n [sic] MLS number that is registered."²³

15 16. Lohrey represented that he is an experienced and well-versed
16 businessman with a wide variety of worldly experience. A person with such experience
17 should have known that proper licensing was required to operate as a Nevada mortgage
18 broker.
19

20 17. It appeared to the general public that SMM was operating as a fully
21 licensed mortgage broker. Nevada mortgage lending laws were created and exist to
22 protect the public. That Lohrey may not have *intended* to commit a violation of Nevada
23 law is not relevant to the statutory duty of a Nevada mortgage broker to secure the
24 necessary licensing as mandated by Nevada law.
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28 ²¹ State's Exhibit 1, pages SMLLC0033-0038.

²² State's Exhibit 1, pages SMLLC0039-0050.

²³ State's Exhibit 1, page SMLLC0122 line 20.

1 18. Lohrey hired Lucas knowing that licensing was already a problem with
2 Renew Lending. Lucas operated out of the West Liberty address soliciting loans from
3 walk-ins and telephone calls. Lucas attempted to process loans by representing SMM
4 as a fully functional and licensed mortgage broker. Lucas testified that when he found
5 out his loans could not be processed by Renew Lending he then tried to negotiate the
6 loans with other lenders.
7

8 19. During the hearing Lohrey repeatedly stated that Renew Lending gave him
9 authorization to open SMM. Once SMM was open, he attempted to process loans.
10 Lohrey presented no credible evidence of an executed agreement with Renew Lending
11 for either Reno location. Nor did he present evidence that Renew Lending was planning
12 to provide licensing for SMM. Additionally, Lohrey solicited large real estate firms such
13 as Dickson Reality in attempts of becoming their exclusive lender.
14

15 20. Lohrey testified that he consulted with the law firm of Holland and Hart
16 concerning his involvement with SMM and they advised him that he was fully compliant
17 with Nevada law. Lohrey provided no credible evidence that Holland and Hart ever
18 improperly advised him.

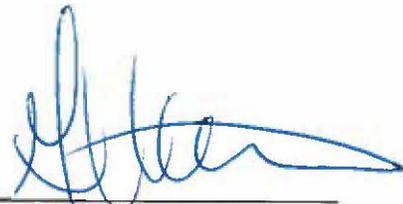
19 21. The purpose of the hearing in this matter was not to establish or
20 substantiate whether Lohrey has legal recourse against Renew Lending, or any other
21 entity, or to prove that Lohrey was maltreated by Renew Lending or any other entity.
22 Instead, the purpose of this hearing was to determine whether Lohrey violated the law
23 by acting as a mortgage broker without proper Nevada licensing.
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25 22. No evidence was presented to show that Renew Lending or Lohrey ever
26 filed an application with MLD to start the licensing process.
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1 Pursuant to NRS 622.400, Respondents shall pay \$4,740.00 within 60 days from
2 the date of this Order for MLD's investigative costs, and attorney fees of the
3 Commissioner.²⁴

4 Pursuant to NRS 622.400, Respondents shall pay \$2,000.00 within 30 days from
5 the date of this Order for the costs of this proceeding, and attorney fees of the
6 Commissioner.
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9 Dated this 17th day of April 2019.



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12 Gary J. Mathews, Esq.
13 Administrative Law Judge
14 State of Nevada
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²⁴ State's Exhibit 1, pages SMLLC0001-00012.

1 **CERTIFICATE OF MAILING**

2 I, Gary J. Mathews, Esq. do hereby certify that I deposited in the U.S. mail,
3 postage prepaid, via First Class Mail and Certified Return Receipt Requested, a true
4 and correct copy of the foregoing **FINDING OF FACT, CONCLUSIONS OF LAW, AND**
5 **ORDER** to the following:

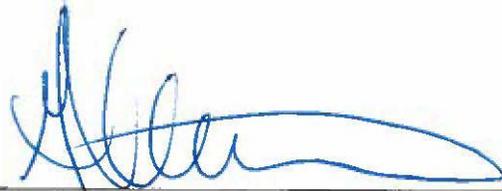
6 David Lohrey
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9 Dennis L. Belcourt, Esq.
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11 555 E. Washington Ave., Ste. 3900
12 Las Vegas, NV 89101

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14 Dated this 17th day of April 2019.

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18 Gary J. Mathews, Esq.
19 Administrative Law Judge
20 State of Nevada
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